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Supreme Court, U.S.
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CASE NO. 95-496

THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1995

LAWRENCE MOORE,

PLAINTIFF/PETITIONER,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 569; THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; PAUL BLACKWOOD; WAYNE LOVIN; JAMES WESTFALL; TOM PRIDEMORE; JOSEPH HEISLER; BOB FLOWERS; AND BAKER ELECTRIC, INC.,

DEFENDANTS/RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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85

QUESTION PRESENTED FOR REVIEW

1. Can a district court interfere with a Fifth Amendment right to enjoy property (funds in the Federal Registry deposited as a bond to stay execution on judgment) after an appeal is final, by refusing to release it, and deny the prevailing party due process rights by holding hearings without notice or jurisdiction (there was no remand), inviting any interested parties to show cause why funds should not be released, and by then disbursing the funds to "interested parties" by aberrating both the law and facts?

LIST OF ALL PARTIES

Plaintiff Lawrence Moore, Defendants Local 569 of International Brotherhood of Electrical Workers, Joseph Heisler, Bob Flowers, attorney George de la Flor, and L & B Electric, Inc.

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QUESTION I (at page 25, *infra*):

This petition should be granted because the district court's seizure of property without notice, due process or jurisdiction overstepped

the boundaries of accepted procedure, departed from the usual course of judicial proceedings, conflicted with applicable decisions of this Court, and requires exercise of the Supreme Court's powers of supervision.

QUESTION II (at page 31, *infra*):

District and circuit court distortions of the facts, law, and record without findings of fact to permit IBEW Local 569 to interfere with Petitioner's right to enjoy his property have overstepped boundaries of accepted procedure, departed from the usual course of such judicial proceedings, and require exercise of the Supreme Court's powers of supervision.

QUESTION III (at page 36, *infra*):

District and circuit court distortions of the facts, law, and record without findings of fact, to permit attorney George de la Flor to interfere with Plaintiff's property, conflicted with the decisions of other circuit courts and raised a question of law which hasn't been, but

should be, decided by this Court, overstepped boundaries of accepted procedure, departed from the usual course of judicial proceedings, and require exercise of it's powers of supervision.

QUESTION IV (at page 42, *infra*):

District and circuit court distortions of law, the facts, and the record to permit L & B Electric, Inc. to interfere with Petitioner's right to enjoy his property overstepped the boundaries of accepted procedure, departed from the usual course of judicial proceedings, and require exercise of the Supreme Court's powers of supervision.

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STATEMENT OF JURISDICTIONAL GROUNDS.

The circuit court's Memorandum was filed on May 8, 1995. Appellee Fischbach & Moore, Inc.'s Rehearing Petition was denied on June 22, 1995. Jurisdiction over the original case was proper in the district court under 28 U.S.C. §§ 1331, 1337, 1343, and 29 U.S.C. 412, and appellate jurisdiction to review orders of the district court filed on December 15, 1993 and January 13, 1994 was proper under 28 U.S.C. § 1291. This court has jurisdiction to hear this matter under Rule 10 of the Supreme Court Rules.*

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STATEMENT OF THE CASE.

A. INTRODUCTION

Case No. 85-1719-B was filed on July 25, 1985, the jury awarded the Plaintiff $66,156.31 on December 18, 1989, and he was awarded costs of $5,201.36 (see Appendix, pp. 5, 10) against International Brotherhood of Electrical Workers Local 569, president Joe Heisler and sergeant-at-arms Bob Flowers (collectively referred to as "Local 569") for operating a corrupt Union hiring hall, violating the Plaintiff's Labor-Management Reporting and Disclosure Act § 101 (29 U.S.C. 411) protected rights to freedom of speech, assembly and his participation in union affairs and also for assaulting him (with guns) and battering him (Appendix, p. 3).

The final order was entered on March 21, 1990. Plaintiff filed Appeal No. 90-55557 but did not designate any portion of the transcript and none was cross-designated by any Defendant.

Local 569 filed Appeal No. 90-55558, then designated the entire trial transcripts (Civil Docket ("CD") 490), filed a notice of intent to

appeal twenty [20] Issues (CD 493), and filed and posted a $70,000.00 cash bond.

International Brotherhood of Electrical Workers Defendants ("IBEW") filed an Appeal No. 90-55559 from denial of sanctions. IBEW culled and designated parts of trial transcripts which supported its arguments and filed a Certificate of Non-Necessity to designate the full record.

On August 20, 1990 the district court held F.R.App.P. 10 required appellant to provide the complete record on appeal (Plaintiff's Excerpts of Record on appeal ("ER") at 17). IBEW also admitted it was colluding with its Local 569 to deny Plaintiff access to the trial transcripts ordered in Appeal No. 90-55558 (ER 19-20).1/

1/. Appeal Nos. 90-55558 and 90-55559 were consolidated. The court said IBEW didn't need to order a separate transcript for its appeal because Local 569 ordered a full transcript in Appeal No. 90-55558, and told Plaintiff, "It's not your problem. You're not responsible for it, so you could care less who pays for it . . .. [I]ts a cost for Local 569." Local 569 agreed and the Court said, "downstream . . . it may be that costs should be apportioned among [Local 569 and IBEW]," and ordered both of the parties to use transcripts ordered by Local 569 (ER 25-30, see also Appendix, p. 12, ¶ 5).

Local 569's and IBEW's consolidated Appeal Nos. 90-55558 and 90-55559 were denied on April 1, 1993. The jury verdicts for Plaintiff were affirmed in their entirety in IBEW Local 569's losing Appeal No. 90-55558, and it petitioned for a rehearing on April 14, 1993. Plaintiff's Appeal No. 90-55557 was also denied.

The circuit court later filed an Order and Amended Opinion on June 28, 1993, and Local 569 filed another Petition for Rehearing. On August 30, 1993 Local 569's Petition for Rehearing was denied. The final mandate on appeal from D.C. # 85-1719-B was issued by the circuit court on September 16, 1993 (Appendix, pp. 16, 17).

Plaintiff concurrently served an *ex parte* request for an order releasing the $70,000.00, and delivered it to the district court Clerk.2/

2/. Plaintiff discovered in December, 1993 his request was not filed, and moved to correct the Civil Docket (CD 598-600). The court held it "had not yet spread the Ninth Circuit's mandate . . . restoring the court's jurisdiction to release the appeal bond. As the court spread the mandate on September 27, 1993, the court hereby orders plaintiff's motion filed *nunc pro tunc* to September 27, 1993" (Appendix, p. 47).

Fischbach & Moore, Inc. ("Fischbach") and Local 569 filed oppositions to the request for release of the Registry funds. Local 569 also argued L & B Electric, Inc. had a lien.

On November 1, 1993 lawyers for Local 569 and IBEW here, and for Union, Employers Ass'n, and Joint Trusts Defendants in D.C. # 91-1543-B showed up at the hearing on Plaintiff's motions for relief from attorneys' fees awards in D.C. # 87-0172-B. The judge held a hearing in D.C. # 85-1719-B without notice or jurisdiction, and despite Plaintiff's vehement objections.3/

The judge finally admitted that he had "an obligation to lift any stay on any public money

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3/. The group said they were notified by the court. The judge at first insisted there was a noticed hearing in D.C. # 85-1719-B, but later admitted no hearing was scheduled in that case.

The judge had direct contacts (and through his law clerk) with Fischbach's lawyers, union lawyers, and the Clerk of Court, and Plaintiff asked him to recuse himself. After he refused that oral request, Plaintiff filed a motion to recuse and supporting Declaration outlining the judge's ongoing bias and partiality (CD 593).

Fischbach's lawyer was senior partner for one of three big local firms which specialized in representing corrupt contractors in defense-rich San Diego. The judge was a senior partner for the biggest firm before his appointment.

that belongs to parties if there's nothing against the funds," said he would order release of the funds at 4:00 P.M. and rights of parties would flow as of 12:45 P.M., but he then stayed release until 4:00 P.M. the following day so as to give non-party Fischbach enough time to file a preemptory writ (ER 114-120). But he called Fischbach's lawyer that night and told him he would also not release the funds to Plaintiff the next day (see CD 593, Exhibit "G").4/

On November 2, 1993 the court Clerk handed Plaintiff an order holding that Fischbach had no lien, that the court restored jurisdiction by its own September 27, 1993 spreading (sic) of the circuit court's mandate, that ordered Local 569 to show cause why the Registry funds should not be released to Plaintiff, ordered the Clerk to release all the remaining funds to

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4/. Plaintiff asked the judge how Defendants' and Fischbach's stay got before him, and the judge admitted "there was no noticed motion or anything," but answered Fischbach's requests, "Because all of the parties are before me in court," and excoriated the Plaintiff because "you've won the issue" (ER 120-25).

Plaintiff as of November 1, 1993 at 12:45 P.M., scheduled a hearing to "determine the existence of any and all liens," invited "all interested parties" to file and serve moving papers on or before November 16, 1993, and set a schedule to hear Plaintiff's motions to strike documents filed by non-party Fischbach and the notice of lien by L & B Electric, Inc. (Appendix, p. 20).

On November 12, 1993 the court also filed another order which denied another request by Plaintiff to release the funds, scheduled new motions by Fischbach to intervene, and denied requests for a hearing to reconsider its lien and its request for a writ of attachment, and denied a writ of execution (Appendix, p. 26).

Plaintiff filed a motion asking the judge to recuse himself and filed a petition for writ of mandamus (No. 93-70839) in the circuit court asking for an order releasing funds, which were unencumbered when the final mandate was issued on September 16, 1993, and still unencumbered on November 12, 1993.

On November 9, 1993 Local 569 served the

Plaintiff with its "Points and Authorities on Behalf of Defendants IBEW Local 569 Re Release of Supersedeas Bond to Plaintiff."

On November 18, 1993 Plaintiff was served (late) with L & B Electric's motion to enforce judgment lien (filed in D.C. ## 85-1719-B, 87-0172-B and 91-1543-B). Defects in its original notice were not corrected and no certified copies of any judgments were produced.

On November 19, 1993 he was served (late) with "Application for Distribution of Attorney Fee Lien" by George de la Flor.5/

On November 19, 1993 Plaintiff was served with the IBEW's "Motion for an Order Releasing IBEW's Cost Judgment From Funds Held by Court; Enforcement of Lien," and the Union, employers association and Joint Trusts Defendants' (D.C. # 91-1543-B) "Motion to Determine Validity of

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5/. De la Flor proposed splitting an inflated attorney fees claim (with priority) to pre-empt Fischbach's claims, demanded $10,000 to go away after Plaintiff exposed his scheme to the court and began helping Fischbach's lawyers to extort Plaintiff into dropping an appeal of its escape from D.C. # 87-0172-B) (CD 595).

Lien" (which had D.C. ## 85-1719 and 91-1543-B in the caption).

On November 25, 1993 Plaintiff was served (late) with "Defendant" Fischbach's "Points and Authorities in Support of Its Entitlement to Monies Held by the Clerk of the District court and Motion for an Order to the Clerk to Release Funds to Fischbach Pursuant to Its Writ of Execution" (asking to reconsider the November 2, 1993 order, and had D.C. ## 85-1719-B, 87-0172-B and 91-1543-B in the caption).

On December 1, 1993 the court denied the Plaintiff's motion to recuse, found Local 569 owed Plaintiff $1,671.85 over the amount in the Federal Registry, that Local 569 had setoffs of $16,328.84, that L & B had a lien for costs of $612.57 in D.C # 86-0407-K and $102.00 costs on appeal, that Fischbach had a judgment against Plaintiff for $224,140.01 attorney fees in Case No. 87-0172-B, that de la Flor had a valid lien which would be heard January 7, 1994, and which ordered $14,656.99 disbursed to IBEW Local 569, $955.05 to L & B Electric, and $33,112.04 to

Fischbach (Appendix, p. 31).6/

Plaintiff moved for a stay of disbursement of the funds pending appeal, which was denied. The court filed an order on January 13, 1994 holding that George de la Flor's lien survived his withdrawal, ordered $6,404.21 disbursed to him and the remaining Registry funds disbursed to Fischbach (Appendix, p. 48).7/

Plaintiff moved for a stay of disbursement of the funds pending appeal, which was denied,

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6/. Plaintiff objected to hearing three cases which the court had no jurisdiction over at the same time but was denied (see n.11,*infra*). Lien claims by IBEW here, and Union, employers ass'n and Trust Defendants in D.C. # 91-1543-B were denied. A Writ of Execution ostensibly filed by Fischbach November 2, 1993 was found valid (no such writ existed, see also Appendix, p. 26).

The court ordered $17,500.00 held until it ruled on de La Flor's lien, and misrepresented that Plaintiff had "notified the court that he chooses to litigate this dispute in court" (but the judge gave him only a choice of arbitration or the court) and he stated only that he wanted to preserve his right to appeal the decision.

7/. The judge awarded 6% interest on the full $4,962.50 de la Flor requested under a written contract, ignored proof he was paid $8,225.00, that his billing statements were altered, that they failed to apportion billing hours to this case or D.C. # 87-0172-B, or between Plaintiff and a co-plaintiff, and that representing both plaintiffs created a conflict in interest.

and requested findings of fact on the awards of transcript costs to Local 569 and attorney fees to George de la Flor. The court declined to issue findings of fact and denied Plaintiff's request (Appendix, p. 53).

Plaintiff wrote the court for a hearing date to file F.R.Civ.P. 60 motions for relief from fraudulent awards to Local 569 and George de la Flor. The court then misrepresented in an order that Plaintiff asked to file motions for reconsideration, and it established a new procedure whereby it would review such motions before deciding "whether it will entertain the motion" (Appendix, p. 54).8/

B. RESPONDENT IBEW LOCAL 569

Local 569 submitted a Bill of Costs to the circuit court on April 14, 1993 misrepresenting that the transcript costs it had incurred only

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8/. The judge's manipulation of witnesses, the Civil Docket, the facts, the law, evidence, the trial and hearing transcripts, and other phases of the record in three cases (see Petitions for Writ of Certiorari Nos. 93-1026, 94-439 and 94-556) extended to denial of access to the court.

in its own losing Appeal No. 90-55558 had been incurred in Plaintiff's Appeal No. 90-55557.

Plaintiff submitted copies of Local 569's form voluntarily designating the transcripts in Appeal No. 90-55558 and of its notice of intent to appeal twenty issues, his F.R.A.P. 10(b)(1) certificate filed in Appeal No. 90-55557 (which stated no transcript was designated (CD 467)), and proved that no transcript was ever cross-designated by Local 569 under Circuit Rule 10-3.3. The Bill of Costs was rejected.9/

On May 24, 1993 Plaintiff applied for an order, pursuant to 28 U.S.C. § 2042, releasing the $70.000.00 (ER 14), and Local 569 filed an "opposition" to his application for an order and its attorney filed a sworn Declaration that the Clerk of the district court had awarded it

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9/. Local 569, as Appellant in its own losing appeal No. 90-55558, had the duty to order all parts of the trial transcript necessary for the determination of issues it presented on appeal. Fed.R.App.P. 10 "imposes a burden on appellant to print all of the evidence, good and bad, material to the point he wishes to raise." *Chernak v. Radio*, 331 F.2d 170, 171 (1st Cir. 1964), *quoted in Hayes v. Consolidated Service Corp.*, 517 F.2d 564 (1st Cir. 1975).

$14,148.00 transcript costs in the Plaintiff's Appeal No. 90-55557. No order was produced.10/

Plaintiff telephoned the district court Clerk on June 8, 1993 about Local 569's claim it was awarded $14,148.00 transcript costs on appeal. The Clerk denied issuing any order or judgment awarding costs on appeal to Local 569, said if Defendant showed up alone for a hearing on a Bill of Costs he would sign the Bill, but that was not a judgment and he had never signed any order. The Clerk said he would check the Civil Docket and asked Plaintiff to contact him

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10/. After its Bill of Costs had been rejected by the circuit court Local 569 submitted those same costs to the district court Clerk on April 29, 1993 (without serving Plaintiff) while the case was still on appeal and its Petitions for Rehearing were still before the circuit court. No order or judgment awarding transcript costs to Local 569 was ever filed in the Civil Docket by the Clerk. Local Rule 54.1.q states, "The District court does not tax or re-tax appellate costs." (Appendix, p. 77).

The Clerk had previously awarded $2,180.00 to Local 569 despite Plaintiff's proof that its Bill was based on receipts for depositions that Plaintiff took of Defendants in D.C. # 85-1719-B, depositions taken in then still-pending D.C. # 87-0172-B and depositions never taken at all. The Clerk's order stated the judge ordered that award (Appendix, p. 8). No lien was filed.

the following Monday.

The Clerk reassured Plaintiff many times that he would hold a hearing before any award of costs to Local 569, but did not schedule any hearing and refused to put anything in writing. On October 29, 1993 Plaintiff hand-delivered a letter outlining the Clerk's duplicity since June 11, 1993 (see CD 593, Exhibits "B," "C" and "C1").

C. FISCHBACH & MOORE, INC.

After Plaintiff filed an application for an order releasing the funds (which the court said was lost), Fischbach filed lien attempts, motions and oppositions until the court held it had no jurisdiction (Appendix, p. 14).11/

11/. The district court held its jurisdiction wasn't regained "until the mandate is issued," begging the question that it was regained even if there was no remand.

Fischbach's documents listed D.C. ## 85-1719-B, 87-0172-B and 91-1543-B in the caption, and the court began filing orders with the same caption. D.C. ## 85-1719-B, 87-0172-B and 91-1543-B were all on appeal and Fischbach was not a party to 85-1719-B. The court co-ordinated the efforts of Local 569 and Fischbach to stop release of the $70,000.00.

On June 9, 1993, at a D.C. # 91-1543-B hearing Fischbach "piggybacked in" (no notice) requests for guidance on how it should proceed with a writ of attachment, lien and opposition to Plaintiff's application for release of the funds. The court said it would not release the money but "The Union lost the appeal" and "must satisfy the judgment" (ER 33-38).

On June 11, 1993 Fischbach was awarded $224.140.01 in attorneys fees against Plaintiff in D.C. # 87-0172-B (the basis for its guidance request on June 9, 1993), he moved to vacate the award and it was stayed pending a November 1, 1993 hearing.12/

12/. In Case No. 87-0172-B Plaintiff sued Local 569, the IBEW and Fischbach for successfully conspiring to defraud the Federal Government of hundreds of $million$ of dollars nationally by breaching collective bargaining agreements ("CBAs") through transfers of union employees to Fischbach's "puppet corporations," newly-created to circumvent debarments.

The same judge would not let Plaintiff complete his discovery, bifurcated breach of contract, conspiracy, and racketeering claims against Fischbach and both unions from the case, bifurcated claims against both unions from claims against Fischbach on the first day of trial, and ordered Plaintiff to prove Local 569 breached a duty of fair representation in

Plaintiff called the court on September 23, 1993 to file a motion to strike Fischbach oppositions to his September 16, 1993 request for an order releasing the funds. The law clerk said funds would be released as soon as the judge completed the paper work, asked him to let Fischbach file their late reply to his motion to vacate the $224,140.01 award, called back several times recounting calls to lawyers

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grievance hearings held after Fischbach had lost motions for summary judgment and to dismiss (Plaintiff alleged any grievance was futile and refused to participate, the court held that grievance decision was tainted and denied four more Fischbach motions to dismiss and for summary judgment based on *res judicata* effect of the exculpatory grievance decision).

Even though Fischbach was not a party, the judge let it make opening and closing arguments and introduce evidence and witnesses. But he excluded Plaintiff's evidence, lead unions' and Fischbach witnesses, testified himself on the desirability of grievance committees, permitted lies and evasions in Defendants testimony, said he didn't know what "objective third parties" on the grievance committee meant, would not let Defendants' witnesses be fully cross-examined or subject to recall, would not permit any evidence of Fischbach's debarments, Defendants' conspiracy or any rebuttal case, gave the jury prejudicial instructions and refused to explain them when they requested, and ordered Plaintiff to try issues he did not sue for rather than those he had.

for Fischbach and, after he refused, called the next day and told him those funds would not be released before the November 1, 1993 hearing on his motion to vacate in D.C. # 87-0172-B.

Plaintiff confirmed the calls by letter, and complained about the constant *ex parte* communications between Fischbach's attorneys and the judge's chambers, and the parties were ordered to communicate with the court only in writing (Appendix, p. 19).

Fischbach and the court used the award to harass Plaintiff with judgment debtor exams, interrogatories, hearings, assaults and insults to extort him into dropping claims against New York corporation Fischbach related to its successful conspiracy with the IBEW and Local 569 to defraud the Federal Government out of hundreds of millions of dollars.13/

13/. Plaintiff believes he can logically infer a collusive relationship between that district court judge and a Ninth Circuit chief judge who both sit in San Diego, and whose connections to former San Diego resident and convicted felon Ed Meese (tied to another New York corporation that defrauded the Federal Government out of hundreds of millions) have been published.

The court's award of $224,140.01 attorneys fees to Fischbach was overturned on May 5, 1995 in Appeal No. 93-56717 from D.C. # 87-0172-B.

D. RESPONDENT GEORGE DE LA FLOR

On March 14, 1990 attorney George de la Flor, who had withdrawn from his contingency fees contract with the Plaintiff, filed a one sentence notice of lien which was not served. Plaintiff found the notice in the district court's files while preparing his appeal.14/

George de la Flor was not a real party in interest in D.C. # 85-1719-B and made no motion to intervene, there were no statutory awards

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14/. Such contracts do not give the attorney a power coupled with an interest, and he cannot intervene in the case or move for establishment of a lien on any prospective recovery; his sole means of enforcement is an independent action after the client has recovered judgment. 1 B.E. Witkin, *California Procedure 3d*, §§ 83, 146 (1985), citing *Bandy v. Mt. Diablo Unified School Dist.*, 56 C.A.3d 230, 234, 126 C.R. 890 (1976). "Charging liens" aren't recognized in California and contingency fee agreements don't make attorneys a real party in interest to the client's action. *Id.*, at §§ 143, 149, citing *Irsin v. Superior Court*, 63 C.2d 153, 161, 45 C.R. 320, 403 P.2d 728 (1965).

of attorneys fees, the district court did not involve itself in details of the fee agreement when it had jurisdiction over the case, and it had no good reason to exercise any ancillary jurisdiction. *Venegas v. Skaggs*, 495 F.2d 527, 531 (9th Cir. 1989), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S. 82, 110 S.Ct. 1679, 109 L.Ed.2d 74 (1990).

E. RESPONDENT L & B ELECTRIC, INC.

On February 6, 1990 a non-party, L & B Electric, Inc., filed a non-conforming notice of judgment creditor's lien against Plaintiff's judgment, based on ostensible awards of costs in district and circuit courts in a separate case (under California Code of Civil Procedure ("C.C.P.") § 708.41 (sic). Plaintiff timely filed a claim of exemption from the notice.15/

C.C.P. § 708.410 provides that a judgment creditor may file a lien against any judgment debtor who is a party in a pending action, and required L & B Electric to file an abstract or certified copy of any money judgment. But it

admitted in an opposition (CD 464) to the claim of exemption that it didn't file any certified copy of the ostensible district court judgment or attempt to file any "abstract," and filed only a copy of the first page of its Bill of costs in the circuit court (see C.C.P. § 674, defining an "abstract," at Appendix p. 66).

L & B's notice also failed to contain any circuit court title or any amounts which would satisfy any circuit court judgment as required by C.C.P. § 708.420 (Appendix, p. 70), and the amount listed to satisfy an ostensible district court judgment wasn't consistent with amounts listed on non-conforming exhibits. Statutory procedures for enforcement of judgments must be strictly followed. *Trounce v. Whittier Savings Bank*, 136 C.A. 761, 763, 29 P.2d 789 (1934).

15/. District court judgments are not final if appealed, but Fed.R.Civ.P. 69 also provides for execution under state law. C.C.P. § 697.040(a) states if enforcement of a judgment is stayed on appeal by posting of a security, existing liens are extinguished and new liens may not be created during the stay. And there was no lien endorsed on Plaintiff's judgment, as required by C.C.P. § 708.460 (Appendix, p. 68, 73).

F. THE CIRCUIT COURT ON APPEAL

The circuit court invalidly begged the question of the district court's jurisdiction after its mandate issued on September 16, 1993 by stating "a court retains jurisdiction over matters necessary to satisfy a judgment," "The district court is divested of authority . . . until the mandate has issued," and concluding in a *non sequitur* "the contested orders were made well after issuance of the mandate."

The circuit court begged the other issues by finding that funds were still a supersedeas bond after an appeal is final, that Local 569's "offset" was "pursuant to the district court's authority to tax costs," that Fischbach had a valid writ of execution, and George de la Flor and L & B Electric had liens (Appendix, p. 56).

The court was not candid in citing *Venegas v. Skaggs, supra*, and *United States v. 717.42 Acres of Land*, 955 F.2d 376 (5th Cir. 1992) "to acknowledge the validity of attorney's liens in federal actions," and *Pearlmutter v. Alexander*, 97 Cal.App.3d Supp.16, 158 Cal.Rptr. 807 (1987)

to hold that "California law also provides that an attorney's lien survives an attorney's discharge or voluntary withdrawal."16/

The Memorandum misrepresented that "L & B had been awarded damages and costs," and showed it did not even examine the record to find "The record reflects L & B" filed "a certified copy of its judgment in order to obtain a lien."17/

16/. *Pearlmutter* was roundly criticized, and overruled, by *Estate of Falco*, 188 Cal.App.3d 1004, 233 Cal.Rptr. 807 (1987) (clients are not required to make restitution to attorneys who withdraw unless the withdrawal is in adherence to ethical mandates, and other ethical criteria also apply), which was also inexplicably cited.

Venegas acknowledged that attorney's liens may not be litigated in federal courts, except under very specific conditions, and also held, "we hasten to add that we are not holding that an attorney seeking to defend a contingency fee contract may intervene as of right in the underlying action." *Venegas*, 495 F.2d at 531, citing *Hoffert v. General Motors Corp.*, 656 F.2d at 166 (5th Cir. 1981) (the district court abuses its discretion by allowing a fee without carefully considering factors set forth in the ABA Code of Professional Responsibility).

17/. As already shown, L & B admitted it did not file a certified copy, no lien was recorded on Plaintiff's judgment as required by C.C.P. § 708.460 (see n. 15, *supra*) in the district court (at CD 464), and L & B never moved for an order under C.C.P. § 708.470(a) to satisfy any lien while the district court had jurisdiction.

The Memorandum finding that L & B's lien was not extinguished under C.C.P. § 697.040(a) because it "applies only to stays that occur in the case where the creditor recovered the judgment" isn't supported by cited case law.18/

The circuit court also misrepresented that Local 569 was entitled to costs in a completely separate case (Plaintiff's Appeal No. 90-55557) for transcripts ordered only in its own losing Appeal No. 90-55558, that Local 569 "provided evidence" it served its district court bill of costs and hearing notice on Plaintiff (citing no evidence, and ignoring lack of jurisdiction to hear the bill), that the court did not abuse its discretion by assessing the Plaintiff Local 569's transcript costs (ignoring that the costs assessment was fraudulent), and that allowing "Local 569 an offset against his judgment did

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18/. *California Commerce Bank v. Superior Court*, 8 Cal.App.4th 582, 10 Cal.Rptr.2d 418 (1992) (as cited by the circuit court) instead holds that the Plaintiff's judgment should have been released to him as per C.C.P. § 697.050, and that his rights "cannot be interfered with except through procedure authorized by statute. *Id.*, 10 Cal.Rptr.2d at 419, 421.

not conflict with the local rules."19/

The circuit court did not comment on the appeal of the judge's refusal to recuse himself or to release jury verdicts here and in D.C. # 87-0172-B in 1991, after appeals were final.20/

19/. The circuit court Memorandum stated that Local Rule 54.1(c) provided for "[t]he cost of transcripts necessarily obtained for appeal is allowable," and comports with F.R.App.P. 39(e) "which directs district courts to tax the costs of the reporter's transcript." But there was no showing that transcripts were "necessarily" obtained," or that L.R. 54.1(c) is controlling.

A debtor may exercise an equitable right to offset claims in California, but may do so: (a) by an action against a judgment creditor; (b) a cross-complaint in an action brought by a creditor to enforce a judgment against a debtor; (c) a motion by a debtor/defendant in such an action, after judgment for creditor. [Vol.] 8 B.E. Witkin, *California Procedure*, § 461 (1985) (citations omitted).

20/. The judge held in D.C. # 91-1543-B that "a certain abstention doctrine exists between the courts and the running of labor unions" awarded $2,180.00, $14,148.00 and $955.05 in costs, and attorney's fees of $6,404.21 in D.C. 85-1719-B; fees of $6,846.75, $224,140.01, and $512.50 in D.C. # 87-0172-B; fees of $1,255.00, $2201.00, and $46,429.75 in D.C. # 91-1543-B (dismissed because Plaintiff could not post a $200,000.00 bond to proceed); and demanded many costs bonds (approx. $10,846.75, one demand is on appeal) before permitting any appeals of those awards.

He has also refused to "spread" the mandate reversing Fischbach's award, or to order return of funds, none have been released to Plaintiff, and four more appeals have been filed.

VI. ARGUMENT

I.

The district court judge insisted it had jurisdiction over this case after it was final on appeal and not remanded, but the Plaintiff's judgment was unencumbered by writs or liens and was the only judgment recorded in the Civil Docket. The court held a hearing on November 1, 1993 without any notice and over Plaintiff's objections, invited "[all] interested parties" to help it interfere with Plaintiff's property, ordered more hearings and disbursed Plaintiff's property to those parties by distorting the law, facts and record without jurisdiction.

The Constitution (Article 3, § 2) limits the exercise of the judicial power to "cases" and "controversies," and a cornerstone of this limitation is that a federal court should only decide the questions necessary for adjudication of the case before it. See, e.g. *Rescue Army v. Municipal Court*, 331 U.S. 549, 568-70, 67 S.Ct. 1409, 1419-20, 91 L.Ed. 1666, 1677, 1679 (1947); *Aetna Life Ins. Co. of Hartford, Conn.*

v. Haworth, 300 U.S. 227, 240, 57 S.Ct. 461, 463-64, 81 L.Ed. 617 (1937) (A "controversy" in this sense must be one that is appropriate for judicial determination); *Tennessee Publishing Co. v. American National Bank*, 299 U.S. 18, 22, 57 S.Ct. 85, 87, 81 L.Ed. 13, 15 (1936).

The district court had no statutory or any other legitimate basis for refusing to release funds deposited in the Federal Registry after the losing Local 569 Defendants' Appeal No. 90-55558 - from jury verdicts for Plaintiff - was final on September 16, 1993 (and not remanded). *Cf. Lee v. Western Wool Processors, Inc.*, 313 F.2d at 14 (10th Cir. 1962) (funds deposited in the court's registry by the defendant to stay execution on judgment were released on *ex parte* application by the plaintiff).

The district court could not create a controversy on November 1, December 1, 1993, or January 12, 1994 for Defendants in three cases without notice by stating their oppositions to release of Plaintiff's property "certainly is before the court," and by overruling objections

it had no jurisdiction to interfere with his *ex parte* application, made pursuant to 28 U.S.C. § 2042, for an order releasing the funds. The constitutional guarantee of procedural due process applies to governmental deprivation of any legitimate "property" or "liberty" interest within the meaning of the Fifth or Fourteenth Amendment. *Mitchell v. W.T. Grant Company*, 416 U.S. 610, 624, 91 S.Ct. 1895, 1908 (1974).

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions; the purpose of the requirement is not only to ensure abstract fair play to the individual but to protect his use and possession of property from arbitrary encroachment - to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the state seizes goods simply upon application of and for the benefit of a private party. U.S.C.A.Const. Amend. 14.

The court never had *in rem* jurisdiction

over the Registry funds, the *res*, while it had jurisdiction over the case because it had been deposited by Local 569 after filing a notice of appeal. The filing of a timely and effective notice of appeal divests the district court of jurisdiction, divesting the district court of authority to proceed, except in aid of the appeal, or execution of a judgment that has not been superseded. *International Paper Co. v. Whitson*, 595 F.2d 559 (10th Cir. 1979); *Campania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A.*, 527 F.2d 966 (2d Cir. 1975), *cert. denied*, 426 U.S. 936, 96 S.Ct. 2650, 49 L.Ed.2d 387 (1976); *Janousek v. Doyle*, 313 F.2d 916 (8th Cir. 1963).

The cash was only deposited with the court by losing Local 569 Defendants in Appeal No. 90-55558 to stay Plaintiff's execution on jury verdicts and judgment, and "release of the *res* from the control of the court [should have ended] its jurisdiction." *U.S. v. Wingfield*, 822 F.2d 1466, 1471 (10th Cir. 1987)., citing 4C Wright & A. Miller, *Federal Practice and*

Procedure § 1070, at 270 (1969).

No writs of execution or motion for setoff of judgments existed on September 16, 1993, and the district court had no jurisdiction to delay release of Plaintiff's property to "spread" the mandate issued on that day. When the mandate of the court of Appeals is issued, finality is achieved. *Sethy v. Alameda Cty. Water Dist.*, 602 F.2d 894, 897 (9th Cir. 1979). "[A]nd not with its receipt by the district court. . .." *Accord, U.S. v. Crooks*, 826 F.2d 4 (9th Cir. 1987); *U.S. v. Rivera*, 844 F.2d 916, 920 (2nd Cir. 1988) (citations omitted).

No lien was endorsed on the Plaintiff's judgment as required by C.C.P. § 708.460 (see n.17, *supra*) and no claim of exemption from any writ of execution on any liens or judgment was filed which would give the court jurisdiction. In the absence of power to arrest the *res*, no decree *in rem* could be rendered against the *res*. *Alyeska Pipeline Service Co. v. Vessel Bay Ridge*, 703 F.2d 381 (9th Cir. 1983). It is axiomatic that *in rem* jurisdiction exists only

where the subject matter of the action, the *res*, is within the jurisdiction of the court. *American Bank of Wage Cl., v. Registry of Dist. Ct. of Guam*, 431 F.2d 1215 (9th Cir. 1970).

The district court overstepped boundaries of accepted Federal and California procedure by seizing Plaintiff's property, and its decision to do so conflicted with the decisions of this Court and other circuit courts. "[I]n absence of any cognizable claim of ownership or right to possession adverse to that of Appell[ee], the District Court should have granted [his] motion. . .." *U.S. v. Palmer*, 565 F.2d at 1065 (9th Cir. 1971); *U.S. v. Martinson*, 809 F.2d at 1367-68 (9th Cir. 1987).

Plaintiff has the right under general law to possession or enjoyment of his property, and may maintain an action in tort against those who have denied him that right. *Land v. Dollar*, 330 U.S. 731, 738, 67 S.Ct. 1009, 1012, 91 L.Ed. 1209 (1947), *citing U.S. v. Lee*, 106 U.S. 196, 1 S.Ct. 240, 27 L.Ed. 172 (1882).

"The hallmark of property. . .is an

individual entitlement grounded in state law, which cannot be removed except 'for cause.'" *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 1155, 71 L.Ed.2d 265 (1982). The court's refusal to release the money was an unconstitutional seizure without prior notice or a hearing. 4 Wright & Miller, *Federal Practice and Procedure* § 1070, at 423 (1987).

Both district court interference with the property, and circuit court misrepresentations in its Memorandum to protect the district court (thereby validating interference for six years after the jury verdicts) call for exercise of this Court's powers of supervision, especially in light of the district court's admissions on November 1, 1993 that it had a duty to release funds to Plaintiff that day (and the underlying cover-up of the hundreds of millions of dollars fraud on the Federal Government).

II.

Local 569 had not even filed any equitable action, motion or counterclaim which would give

it a judgment and right to offset costs against the prevailing Plaintiff when the circuit court issued its mandate on September 16, 1993 making the case final on appeal. See n. 19, *supra*.

The case was not remanded, and Plaintiff's judgment was the only one which existed at that time. The district court should have filed the order releasing Registry funds as the Plaintiff requested on September 16, 1993, and absent the ministerial act by the Clerk to not release any portions of the funds subject to liens recorded on his judgment, such funds must be released.

The Clerk of the district court had no jurisdiction to hear Local 569's Bill of Costs on April 29, 1993 (five months before the final mandate issued on September 16, 1993) and never filed any order or judgment. Even a judge does not have the power to suspend what a majority of the judges have required. Wright & Miller, *Federal Practice and Procedure*: Civil § 3152, citing *Spangler v. Atchison, T. & S.F.R. Co.*, C.C.D. Mo. 1890, 42 F. 305, 306.

Local 569 insisted it obtained a district

court costs judgment even before it filed its second Petition for Rehearing in the circuit court, but no such judgment was ever produced.

No hearing on any Bill of Costs submitted by Local 569 to the Clerk of the district court was held after the circuit court mandate issued on September 16, 1993. Local 569 filed no lien and had no judgment for costs of any transcript when it filed "oppositions" and appeared at the un-noticed district court "hearing" on November 1, 1993 to interfere with Plaintiff's property.

Costs were claimed by Local 569 in Appeal No. 90-55557 for those transcripts ordered only in its own losing Appeal No. 90-55558 where the Plaintiff prevailed. None had been designated, or ever cross-designated, in Plaintiff's Appeal No. 90-55557. Local 569 would not even let him copy the transcript at his own expense, and he never possessed it (pp. 2-4, 11-14, *supra*).

Local Rule 54.1.q. Appellate Costs. states that, "The District Court does not tax or retax appellate costs" (Appendix. p.76). Local Rules have the power of law, and are binding on the

parties until they are changed by a majority of the judge's of the districts. Wright & Miller, *Federal Practice and Procedure*: Civil § 3153, citing *Utah-Idaho Sugar Co. v. Ritter*, ___ F.2d 1100, 1103 (10th Cir. 1972).

District court departures from the usual course of judicial proceedings to hold hearings without jurisdiction or notice and to interfere with, and disburse, a Plaintiff's jury verdicts to the Defendants the jury found liable require exercise of this Court's powers of supervision.

The circuit court found that "[t]he costs of transcripts necessarily obtained for appeal is allowable." L.R. 54.1.c. refers to appeals to judges from magistrates as per F.R.Civ.P. 73 through 76, and that phrase - relied on by the circuit court - was not in the Local Rules when Local 569 ordered the transcript.21/

Local 569's designation of the transcript

21/. Compare the text of L.R. 54.1.c., amended January 1, 1992, with operative L.R. 265.4 when Local 569 voluntarily designated the transcript in its losing Appeal No. 90-55558, at Appendix, p. 75 (see also n.1, *supra*).

was made voluntarily (not "necessarily," as the circuit court finding implied), other language in L.R. 54.1.c. states such costs are taxable, "when either requested by the court or prepared pursuant to stipulation."22/

Plaintiff proved to the circuit court that no transcripts had ever been designated in his Appeal No. 90-55557 and that Local 569 incurred the entire transcript costs in its own Appeal No. 90-55558 from jury verdicts for Plaintiff.

The appellate court overstepped boundaries of accepted procedure itself both by distorting the record, the law and the facts on appeal and by sanctioning departures by the district court from the usual course of judicial proceedings,

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22/. The circuit court cited *Cornwell Quality Tools Co. v. CTS Co.*, 446 F.2d 825 (9th Cir. 1971), *cert. denied*, 404 U.S. 1049, 92 S.Ct. 716, 30 L.Ed.2d 740 (1972) to hold apportioning of eighty percent of losing Defendants' costs to the prevailing Plaintiff isn't new practice, But that case was a suit and a cross-complaint where neither party had prevailed.

No cross-complaint was filed against the Plaintiff here, and he was a prevailing party. See L.R. 54.1.1., *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), and *Texas State Teachers Ass'n*, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989).

including the district court refusals to issue findings of fact (Appendix, p. 53).

The district court's arbitrary ordering of "procedures for filing motions" (when asked to calendar motions for relief from the fraudulent disbursements of his property) denied Plaintiff access to the courts, violated both the Fifth and Fourteenth Amendments to the Constitution and Plaintiff's civil rights, and overstepped both the substantive and procedural boundaries of accepted procedure. *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983).

"In an organized society [a right of access to the courts] is the right conservative of all other rights, and lies at the foundation of orderly government. . .. Equality of treatment in this respect is . . . guaranteed by the Federal Constitution." *Chambers v. Baltimore and Ohio Railroad*, 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907)(citations omitted).

III.

The district and circuit courts distorted

the facts, law, and record to hold "California law provides that" attorney de la Flor's lien survived withdrawal (Appendix, p. 60), when the law in California does not recognize "charging liens," and his contingency fee agreement could not make him a party below (see n.14, *supra*).

District court recognition of a notice of lien created by a contract admittedly withdrawn from overstepped all the boundaries of accepted judicial procedures only to create the pretext for interference with Plaintiff's property, and requires the exercise of the supervision powers of this Court (n.16, *supra*).

An attorneys fees lien does not survive a withdrawal. *Cf., Estate of Falco*, 188 Cal.App. 3d 1004, 233 Cal.Rptr. 807 (1987) (overturning and discrediting *Pearlmutter v. Alexander*, 97 Cal.App.3d Supp.16,. 158 Cal.Rptr. 762 (1979), the flagship authority of both courts; *Cassell v. Gregori*, 70 P.2d 721, 28 C.A.2d Supp. 769 (1937)(award of fees to attorney who withdrew was eliminated); *Helpe v. Kulge*, 231 P.2d 505, 104 C.A.2d 461 (1951) (attorneys permitted to

withdraw only on express condition they were entitled to no compensation); *In Re Fountain*, 141 Cal.Rptr. 654, 74 C.A.3d 715 (1977) (after attorney failed to act on behalf of client under contract, the court terminated him and ordered return of all fees paid).

The cites to *Pearlmutter v. Alexander*, 97 Cal.App.3d Supp.16, 158 Cal.Rptr. 762 (1979) and conclusion that attorney/client contracts are exempt from law related to withdrawal and recission in other contracts were outrageous in the extreme. See, e.g., *U.S. v. Texarkana Trawlers*, 846 F.2d 297 (5th Cir. 1988); *Mamula v. McCulloch*, 79 Cal.Rptr. 571, 275 C.A.2d 184 (1969) (rescission is restoration of parties to former positions and abrogating party is liable for remainder of performance); *Pennel v. Pond Union School Dist.*, 105 Cal.Rptr. 817, 29 C.A. 3d 832 (1973) (rescission by consent may be inferred from acts of parties).

De la Flor never served his notice of lien, refuted it when confronted by Plaintiff, never attempted to execute while the court had

jurisdiction, did not attempt to intervene and satisfied none of the conditions necessary for intervention in this case. *Venegas v. Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S. 82, 110 S.Ct. 1679, 109 L.Ed.2d 74 (1990).

Additionally, the question of whether the federal courts have unbridled jurisdiction over attorney/client contingency fee contracts, and under what conditions, if any, hasn't been, but should be, decided by this Court. *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 69 S.Ct. 1173, 93 L.Ed. 1556 (1949).

Resolution of that issue would contribute to the development of national law by deciding whether the federal government has any national interest in supervising attorneys' contingency fee contracts in civil rights, social security disability, class actions and guardian *ad litem* suits on underlying federal law, or whether the contracts should be litigated under state law.

The decision does not turn solely on an analysis of the facts below in this case, since

the district court refused to issue findings of fact on its award of attorneys fees, and there is no indication that its decision depended on the sufficiency of any evidence.

Both courts approved awards of Plaintiff's funds without any finding of reasonableness and refused to let him move to set the awards aside and departed from the usual course of judicial proceedings, thus requiring an exercise of this Court's power of supervision (Appendix, p. 54).

Circuit courts hold that a district court must issue findings of fact to show it awarded such fees reasonably but this circuit court has now decided no guidelines are necessary. *Cf.*, *Starr v. Bowen*, 831 F.2d 872, 873 (9th Cir. 1987) (fees vacated because of no findings of fact on reasonableness of the award); *Hoffert v. General Motors Corp.*, 656 F.2d 161, 165 (5th Cir. 1981) (court must consider factors in ABA Code of Professional Responsibility), citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974); *Allen v. United States*, 606 F.2d 432, 436 (4th Cir.

1979) (contingency fee contract awards can't be confirmed in the absence of findings of fact).

The circuit court distorted the record by stating that, "We acknowledge the validity of attorney's liens in federal actions," citing *Venegas*, 867 F.2d at 531, thereby begging the question that George de la Flor had a right to intervene in this case.

The district court's invitation to "file and serve moving papers," its holding of those hearings on November and December 1, 1993, and January 12, 1994 where it distorted the facts, law and record, and refusals to issue findings of fact, or permit Plaintiff to file a motion for relief from its fraudulent attorneys fees judgment also require exercise of this court's powers of supervision.23/

23/. The November 2, 1993 order was filed one and one-half months after the circuit court had issued its final mandate and Plaintiff's third application for an order under 28 U.S.C. § 2042 releasing his property, and over one full month after even the district court's September 27, 1993 mandate spreading (sic). Ironically, the order is the best evidence that the court held a "hearing" without notice or due process.

IV.

Plaintiff appealed both the district court denials of his claim of exemption from L & B's notice of lien (on grounds that notice did not satisfy C.C.P. § 708.420), and its disbursement of funds after the lien notice was extinguished under C.C.P. § 697.040 (Appendix, p. 70, 68).

L & B Electric, Inc.'s notice of lien was defective, no lien was recorded on Plaintiff's judgment as required by state law, and like the awards of costs to Local 569 and attorneys fees to George de la Flor, no case or controversy existed prior to the district court invitation to assist it in interfering with Plaintiff's property as part of the scheme to extort him to drop claims against Fischbach and the unions.

The circuit court's finding that L & B Electric, Inc. was awarded damages and costs against Plaintiff in a different case, that L & B filed a certified copy of its judgment, and that the holding in *California Commerce Bank v. Superior Court*, 8 Cal.App.4th 585, 583, 10 Cal. Rptr.2d 418, 419 (1992) contradicted the plain

language of C.C.P. § 697.040 (it does not) were deliberate distortions of the record, law, and the facts, and it overstepped the boundaries of accepted procedure and departed from the usual course of judicial proceedings.24/

L & B admitted in its opposition to the Plaintiff's claim of exemption that it had not complied with the statute by filing certified copies of any costs judgment, but the circuit court held that, "The record reflects that [it] did those things." (see CD 464).

The district court admitted Plaintiff's judgment was unencumbered by stating at the end of the un-noticed November 1, 1993 hearing that it would order release of Plaintiff's Registry funds later that day (but reneged after calling Fischbach's attorneys). L & B never attempted

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24/. L & B Electric, Inc. was sued by Plaintiff for firing him after he discovered it and Local 569 had conspired to expose him to asbestos in a plan to avoid control costs of $1,500,000.00 on three similar job sites, and it was cited by OSHA. The district and circuit courts rejected the suit. L & B was cited by OSHA. Plaintiff was represented and received no timely Bills of Costs or awards from those courts, but he later protested to the circuit court (too late).

to execute on Plaintiff's judgment prior to the district court's invitation and did so at Local 569's urging (Local 569 has a duty to represent Plaintiff but argued for L & B in its documents and at the November 1, 1993 hearing).

The district court overstepped the boundaries of accepted procedure by inviting L & B to interfere with Plaintiff's property by filing documents two months after this case was final on appeal and his property should have been released, and also departed from the usual course of judicial proceedings by making the invitation and disbursing funds to L & B after it served the same, defective notice of lien again (late) on November 18, 1993.

The actions of both the district and the appellate courts to interfere, and to sanction such interference, with Plaintiff's property without any jurisdiction require the exercise of the Supreme Court's powers of supervision.

Dated: 9-18-1995 Lawrence Moore

Lawrence Moore

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CASE NO. 85-1719-B

AMENDED JUDGMENT ON SPECIAL VERDICT

Entered March 21, 1990

This case came on regularly for trial before a jury on October 3, 1989, and on December 18, 1989, the jury rendered its verdict. Therefore, it is ordered, adjudged, and decreed as follows:

On the first cause of action, plaintiff shall recover from defendant International Brotherhood of Electrical Workers, Local 569 ("Local 569") the amount of $43,156.31.

On the second cause of action, plaintiff shall recover jointly and severably from defendants Local 569, Heisler, and Flowers the amount of $1,000.00. The plaintiff shall also recover punitive damages in the amount of $10,000.00 from Local 569, $5,000.00 from defendant Heisler, and $2,500.00 from defendant Flowers.

On the third cause of action, plaintiff

shall recover damages in the amount of $500.00 jointly and severably from defendants Local 569, Heisler, and Flowers, and punitive damages in the amount of $1,000.00 from defendant Flowers.

On the fourth cause of action, plaintiff shall recover damages in the amount of $500.00 jointly and severably from defendants Local 569, Heisler, and Flowers, and punitive damages in the amount of $2,500.00 against defendant Flowers.

IT IS SO ORDERED.

DATED: MAR 16 1990

RUDI M. BREWSTER
UNITED STATES DISTRICT JUDGE

MINUTES OF THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Lawrence Moore vs. Local 569 of the IBEW
No. 85-1719-B
Clerk: William W. Luddy

Attorneys	
Plaintiff	Defendants
Pro per	Ed Levy Local 569

PROCEEDINGS: TAXING OF COSTS

Filed Defendant's objection. Cost discussed. Matter submitted pending preparation of Judgment by court and entry thereof.

3-08-90 Judgment having been entered, costs are taxed as follows:

Defendant's objection to clerk fee is sustained and cost is allowed in the amount of $60.00.

Defendant's objection to service fee is sustained. Only the service of the process, summons and complaint is allowable under Title 28, Section 1920. Cost allowed in sum of $45.00.

Defendant's objection to Court Reporter fees for transcripts is sustained pursuant to Local Rule 265-4 and cost disallowed. As to witness fees, defendant's objection to

subsistence is overruled. The established subsistence allowance for this District is $101.00 per day.

Defendant's objection to the fees of Bill Chadwick was not called as a witness and was in attendance in Court although the Court ordered witnesses excluded.

Pursuant to Local Rule 265-4 Defendant's objection to fee for professional service by Robert Wallace is sustained and cost disallowed.

Total witness fees are taxed in the sum of $1,664.26.

Fees for copies, etc. are disallowed. Although binders of exhibits were provided to jurors and exhibits offered at trial, it cannot be determined from the billings which costs would be taxable. Local Rule 265-7 Provides that copies of motions, pleadings, etc. are not taxable.

Defendant's objection to Deposition costs is overruled and cost of $3,028.66 is allowed. Local Rule 265-5 provides deposition costs

are taxable whether or not it is taken solely for discovery.

As to the remaining items of costs, postage, parking, legal research, typing, etc. costs are disallowable on ground they are personal office expenses and not allowable as costs.

Total costs are taxed as follows:

Clerks Fees	$ 60.00
Service Fees	$ 45.00
Witness Fees	$1,664.26
Deposition Fees	$3,028.66
TOTAL	$4,797.92

Counsel's attention is called to Local Rule 265-17 which provides in part that motion to re-tax by any party, in accordance with Rule 54(d)Fed.R.Civ.P., and Local Rule 220 shall be served and filed within five (5) days after receipt of the notice of taxing costs.

DATED: March 8, 1990 INITIALS: WWL
Clerk

MINUTES OF THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Lawrence Moore vs. Local 569 of the IBEW
No. 85-1719-B
Clerk: William W. Luddy

Attorneys

Plaintiff	Defendants
Pro per	Lewis Levy Local 569

PROCEEDINGS: TAXING OF COSTS

3-7-90 Costs discussed. Filed plaintiff's objections to costs. Defendant submitted copies of billings Re Deposition costs. Matter submitted.

3-8-90 Plaintiff's objection to costs on grounds Re prevailing party is overruled. The Court ordered Local 569 recover costs on portion of case.

Plaintiff's objection to fees of Court Reporter is sustained pursuant to Local Rule 265-4, and cost disallowed.

Plaintiff's objection to Depositions costs is overruled and costs allowed.

Costs are hereby taxed in favor of Local 569 in the amount of $2,180.84.

Counsel's attention is called to Local Rule 265-17 which provides in part that motion to

re-tax by any party, in accordance with Rule 54(d) Fed.R.Civ.P., and Local Rule 220 shall be served and filed within five (5) days after receipt of the notice of taxing costs.

DATED: March 8, 1990 INITIALS: WWL
Clerk

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)

ORDER RE CERTIFICATE OF NON-NECESSITY AND MOTIONS TO RETAX COSTS

The above referenced matter came on regularly for hearing on August 20, 1990, before the Honorable Rudi M. Brewster. Appearances were made by Plaintiff Lawrence Moore, in propria persona; Lewis n. Levy, Esq., for Defendants Local 569 of the International Brotherhood of Electrical Workers, Joseph Heisler, and Robert Flowers ("Local 569"); and Terry R. Yellig, Esq., for Defendant International Brotherhood of Electrical Workers ("I.B.E.W."). Based upon the briefs submitted by the parties and the oral argument thereon, it is hereby ordered:

1. As to any future proceedings in this case, the court shall prepare such order itself, without assistance from the parties unless specifically requested. The court is troubled by the substantial and duplicative submissions made by the parties after the

clerk, Magistrate McCue, and the court had carefully considered the written and oral arguments of the parties and made their rulings on the pending motions. The court does not treat the drafting of an order as a Motion for Reconsideration.

2. Plaintiff Moore's Motion to Retax Costs is denied except as to $403.44 in deposition fees which were omitted by clerical error from previous Orders to Tax Costs. To the extent Defendant Moore seeks costs for Robert Wallace in excess of the $101 per day allowed for expert witnesses, his motion is denied since the court finds no exceptional circumstances which warrant an imposition of these fees as costs.

3. Defendant I.B.E.W's Motion to Retax Costs is denied except as to deposition costs of Gilbert Dovey in the amount of $125.95. Although Local Rule 265-5 provides that deposition costs are taxable whether or not the same be actually received in evidence, the court finds that the general provisions

of Local Rule 265-1, requiring that the prevailing party demonstrate that the services be necessarily performed and the costs necessarily incurred in the proceeding, have not been met with respect to the Dovey deposition.

4. Defendant I.B.E.W.'s Motion to Retax Costs is granted as to the witness fees of S.R. McCann, and costs in the amount of $626.00 are hereby taxed pursuant to Local Rule 265-17 against plaintiff Moore.

5. The court finds that Defendant I.B.E.W.'s Certificate of Non-Necessity need not be considered at this time, since Defendant Local 569 has designated the entire trial transcript for its own appeal. In order to prevent waste, the court orders that the parties use said designated transcript. Should this arrangement prove unmanageable, the court will take the Certificate of Non-Necessity under submission.

IT IS SO ORDERED.

DATED: NOV 06 1990 RUDI M. BREWSTER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)

ORDER

The court has been informed that plaintiff Moore has submitted an ex parte Application for Release of Bond to the court. It appears that the papers were properly served on opposing counsel. After a thorough search, the court has been unable to locate the documents and has therefore requested that plaintiff resubmit the papers. These papers are deemed filed, nunc pro tunc, as of the date, May 24, 1993, that plaintiff initially submitted them to the court.

IT IS SO ORDERED.

DATED: JUNE 15, 1993

Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)

ORDER DENYING PLAINTIFF'S EX PARTE APPLICATION TO RELEASE BOND, DENYING PLAINTIFF'S MOTION TO STRIKE, DENYING FISCHBACH & MOORE'S APPLICATION FOR A WRIT OF ATTACHMENT, AND DENYING PLAINTIFF'S SUPPLEMENTAL EX PARTE APPLICATION FOR RELEASE OF BOND

The court is in receipt of plaintiff Moore's ex parte Application for Release of Bond, Moore's request to strike Fischbach & Moore's Opposition, Fischbach & Moore's Application for a Writ of Attachment on the Bond, and Moore's Supplemental ex parte Application for Release of Bond. Upon consideration of the Applications, the Oppositions, and the Reply, Moore's ex parte Application for Release of Bond is denied; Moore's Motion to Strike Fischbach & Moore's Opposition is denied; Fischbach & Moore's Application for a Writ of Attachment is denied' and Moore's Supplemental ex parte Application for Release of Bond is denied. The reasons are set out below.

1. Fischbach & Moore is not a party to this matter though it is a party to other cases before this court involving Mr. Moore. However, since it has filed an Application for a Writ of Attachment on the bond at issue here, the court finds that it has standing to submit the Opposition. The court considers Fischbach & Moore's Opposition in conjunction with the Application for Writ of Attachment. Plaintiff Moore's Motion to Strike the Opposition is denied.

2. A "district court does not regain jurisdiction of the action until the mandate is issued." United States v. Ross, 654 F.2d 612, 616 (9th Cir. 1981). Since this court has not received a mandate notice nor is it aware that such a notice has been issued, this court does not have jurisdiction over this matter. Accordingly, plaintiff Moore's ex parte Application and Supplemental ex parte Application for Release of Bond and Fischbach & Moore's Application for a Writ of Attachment are denied.

IT IS SO ORDERED.

DATED: JUNE 15, 1993 Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CA Nos. 90-55557/90-55558/
90-55559/91-55411

ORDER

BEFORE: ALDISERT*, CANBY AND THOMPSON,

FILED AUGUST 30, 1993

A majority of the panel as constituted in the above case has voted to deny the petitions for rehearing and to reject the suggestions for rehearing *en banc*.

The full court has been advised of the suggestions for an *en banc* rehearing, and no judge of the court has requested a vote on the suggestions for rehearing *en banc*.

The petitions for rehearing are denied and the suggestions for rehearing *en banc* are rejected.

---

* The Honorable Ruggero J. Aldisert, Senior Judge, United States Court of Appeals for the Third Circuit, sitting by designation.

Office of the Clerk
United States Court of Appeals
for the Ninth Circuit
121 Spear Street, P.O. Box 193939
San Francisco, CA 94105-3939

September 16, 1993

USDC, San Diego
Southern District of California (San Diego)
United States Courthouse
940 Front Street
San Diego, CA 92189

C.A. NO.	TITLE	AGENCY/ D.C. NO.
90-55557	Moore v. IBEW Local 569	CV-85-1719-B
90-55558	Moore v. IBEW Local 569	CV-85-1719-B
90-55559	Moore v. IBEW	CV-85-1719-B
91-55411	Moore v. IBEW Local 569	CV-85-1719-B

Dear Clerk:

The following document(s) in the above listed cause(s) is (are) being sent to you under cover of this letter. counsel are being served with a copy of this letter only.

[X] Certified copy of the Decree of the Court

[ ] Judgment of the National Labor Relations Board

[ ] Certified copy of the Entry of Dismissal

The record on appeal will follow under separate cover.

Please acknowledge receipt on the enclosed copy of this letter.

Very Truly Yours,

Cathy A. Catterson
Clerk of Court

By: Sandra Wong
Deputy Clerk

Enclosure(s)
ALL COUNSEL WITHOUT ENCLOSURES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B
Civil No. 87-0172-B
Civil No. 91-1543-B

ORDER DENYING FISCHBACH & MOORE'S EX PARTE APPLICATION FOR DELAY OF DISBURSEMENT OF FUNDS AS MOOT NUNC PRO TUNC TO JULY 7, 1993

The court is in receipt of Fischbach & Moore's ex parte Application for Delay of Disbursement of Funds. Upon consideration of the ex parte Application and the Opposition, the Application is DENIED as moot. Because plaintiff Moore's request to release these same funds in Civ. No. 85-1719 was denied, the Application is moot.

IT IS SO ORDERED.

DATED: SEP 28, 1993 Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B
87-0172-B
91-1543-B

ORDER REQUIRING ALL PARTIES' COMMUNICATION WITH THE COURT BE IN WRITING ONLY AND SERVED ON OPPOSING COUNSEL

Having received allegations of misrepresentations and miscommunications between law clerks and a party to the above captioned cases, the court hereby orders that as of September 24, 1993, all communication between any party to the above captioned cases and any law clerk or other employee of the chambers of the Honorable Rudi M. Brewster be in writing only. No oral or telephonic communication will be allowed. Written communications may be mailed, faxed or hand delivered to the Clerk's Office on the first floor of the United States Courthouse located at 940 Front Street, San Diego, California, and of course will be served on opposing counsel.

IT IS SO ORDERED.

DATED: SEP 29, 1993 Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)
Civil No. 87-0172-B(M)
Civil No. 91-1543-B(M)

ORDER DENYING PLAINTIFF'S MOTIONS FOR CLAIM OF EXEMPTION FROM [OSTENSIBLE] LIEN; ORDER TO SHOW CAUSE WHY $16,328.84 SHALL NOT BE RELEASED TO PLAINTIFF; ORDER SCHEDULING HEARING DATE FOR NOVEMBER 24, 1993; ORDER RELEASING FUNDS TO PLAINTIFF; ORDER STAYING ORDER RELEASING FUNDS TO PLAINTIFF; AND ORDER CONTINUING HEARING

On November 1, 1993, plaintiff's "Motion for Claim of Exemption from [[Ostensible] Lien" filed by Fischbach & Moore, Inc., was heard before the Honorable Rudi M. Brewster. Lawrence Moore appeared for himself; Steven C. Sayler, Esq., appeared for Fischbach & Moore, Inc. ,Lewis N. Levy, Melissa W. Cook, and Jennifer T. Messersmith, Esqs., also appeared for defendants.

The court hereby makes the following findings and orders:

1. The court finds that on October 21, 1993, defendant Fischbach & Moore, Inc., by its counsel, Steven C. Sayler, executed, served and submitted to the court a notice withdrawing its lien filed in cases no. 85-1719-B(M), 87-0172-B(M), and 91-1543-B(M). As of 12:45 p.m., November 1, 1993, Fischbach & Moore, Inc., does not have a lien filed upon monies due and owing to plaintiff in case no. 85-1719-B(M). Therefore, the court hereby DENIES plaintiff's motion for claim of exemption in all three cases as moot.

2. The clerk of the Court is holding a $70,000 bond posted by defendants Local 569 to stay execution of judgment for plaintiff in case no. 85-1719-B(M). On September 27, 1993, the court spread the mandate from the Ninth Circuit affirming this court's judgment, thereby restoring this court's jurisdiction. Now, plaintiff's "ex parte motion for an order releasing bond," executed July 13, 1993, is presently before the court.

3. Also before the court is Defendant

Local 569's "Opposition of Defendant/Appellee/Cross-Appellee Lawrence Moore for Release of Supersedes Bond," executed and served September 17, 1993. Upon consideration of this opposition, the court finds that an issue exists as to whether Local 569 is entitled to an offset for a total of $16,328.84 which represents $2,180.84 awarded to Local 569 in case no. 85-1719-B(M) on March 1, 1990, and $14,148.00 awarded to Local 569 on appeal of case no. 85-1719-B(M) on April 30, 1993. The court cannot consider as potential offsets the other amounts allegedly owed to said defendant, which are listed in its opposition, as these amounts were awarded in cases other than 85-1719-B(M). Therefore, the court hereby issues this order to show cause why plaintiff Larry Moore should not receive from the $70,000 presently held by the Clerk of the Court the claimed amount of $16,328.84. A hearing is hereby scheduled for November 24, 1993, at 2:30 p.m. in

courtroom two. Defendant Local 569 shall serve and file moving papers on or before November 10, 1993; plaintiff shall serve and file opposition papers on or before November 17, 1993; and said defendant shall serve and file a reply on or before November 22, at 12:00 noon and shall submit a courtesy copy to chambers by that time.

4. As to the remaining funds, the court hereby orders that the Clerk of the Court shall release to plaintiff all monies except for those upon which liens existed as of 12:45 p.m., November 1, 1993. However, this order is stayed until the filing date of the court's order resolving all issues heard on November 24, 1993, at 2:30 p.m, in courtroom two.

5. On November 24, 1993, at 2:30 p.m:, the court will hold a hearing in courtroom two to determine the existence and validity of any and all liens on the $70,000 fund, to determine to whom and in what amounts the court should disburse such monies, and to

make a ruling disbursing such monies. All interested parties are instructed to file and serve moving papers on or before November 16, 1993; plaintiff is instructed to serve and file an opposition on or before November 22, 1993. Pursuant to Local Rule 67.2:

> Upon entry of a judgment following a court or jury trial, funds, if any, on deposit in the registry of the court, shall be disbursed only by order of the court after the time for appeal has expired, ...

Under Fed. R. App. P. 4, a party has 30 days within which to file an appeal of a court order. Therefore, once the court enters an order on the issues addressed at the November 24, 1993, hearing, the Clerk of the Court will be unable to release said monies for 30 days. Assuming no appeal is filed and no stay is imposed, however, as the fund is currently held in a certificate of deposit, the bank will not release the fund until its maturity date, which the court understands is on or near the fourth of each month. Therefore, the parties are notified that on or near January 4, 1994, the Clerk of the

Court will disburse the $70,000 presently held by the court.

6. The hearing on plaintiff's "Motion for Claim of Exemption from [Ostensible] Lien," which pertains to a notice of lien filed on July 27, 1993, in case no. 91-1543-B(M) by numerous defendants and executed by Melissa W. Cook, Esq., and is presently scheduled for November 22, 1993, is continued to November 24, 1993, at 2:30 p.m. in courtroom two.

7. Plaintiff has notified the court by a letter written October 25, 1993, that he wishes to obtain a hearing date for a motion to strike documents recently served on him by Fischbach & Moore, Inc., and a motion for claim of exemption from an "ostensible" lien filed by Mark Bennett. If plaintiff still wishes to obtain a hearing date for these motions, the court hereby schedules November 24, 1993, at 2:30 p.m. for these motions as well. Plaintiff shall file and serve his moving papers on or before November 10, 1993;

defendants shall serve and file opposition papers on or before November 17, 1993; and plaintiff shall serve and file a reply on or before November 22 at 12:00 noon and shall submit a courtesy copy to chambers by that time.

IT IS SO ORDERED.

DATED: NOV 2, 1993 Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil NO. 85-1719-B(M)

ORDER CONTINUING NOVEMBER 24 HEARING TO DECEMBER 1; DENYING PLAINTIFF'S MOTIONS FOR STAY AND IMMEDIATE RELEASE OF BOND; SCHEDULING FISCHBACH & MOORE'S MOTIONS TO INTERVENE AND FOR A STAY AND SETTING BRIEFING SCHEDULE; DENYING FISCHBACH'S REQUEST FOR, AND REQUEST FOR HEARING ON, APPLICATION FOR WRIT OF ATTACHMENT; GRANTING FISCHBACH'S REQUEST TO BE INCLUDED ON COURT'S AND PARTIES' SERVICE LISTS; DENYING FISCHBACH'S SEPTEMBER 21 MOTIONS; DENYING PLAINTIFF'S SEPTEMBER 23 MOTIONS; DECLINING TO SCHEDULE HEARING FOR FISCHBACH'S MOTIONS FOR RECONSIDERATION OR TO RESCIND WITHDRAWAL OF LIEN; AND DENYING FISCHBACH'S REQUEST FOR ISSUANCE OF WRIT OF EXECUTION

The court makes the following orders in the above-captioned case.

1. On the court's own motion, the hearing scheduled for November 24, 1993, is continued to December 1, 1993, at 2:00 p.m. in courtroom two. All motions or other requests presently calendared for November 24 will be heard December 1. This hearing is continued due to the court's own wishes, and is not a response to parties' requests for stay or continuance.

2. The court has received plaintiff's "Motion for Stay of All Proceedings Pending a Review by the Circuit Court, and Further Ongoing Request for Immediate Release of Bond," executed on November 5, 1993. The court DENIES plaintiff's motion and request.

3. The court has received a letter from Steven Sayler, counsel for defendant Fischbach & Moore, Inc., dated November 4, 1993, requesting that the court calendar for November 24 Fischbach's motions to intervene, for writ of attachment and for a request for a stay releasing the fund. The court finds

that on October 21, 1993, Fischbach served all parties with its "Opposition to Plaintiff's Request for Release of Bond and Notice of Motion and Motion for Intervention; Application for Writ of Attachment; Request for Stay; Request for Inclusion on Court's (And All Parties') Mailing List; and Withdrawal of Notice of Lien." The court hereby orders that:

(a) Fischbach's motions to intervene and for a stay, as argued in this October 21 pleading, will be heard on December 1, 1993, at 2:00 p.m. in courtroom two. Opposition papers to these two motions shall be filed and served on or before November 24;

(b) The court DENIES, as improperly brought before this court, Fischbach's requests for (1) a hearing on its application for writ of attachment, and (2) a writ of attachment; and

(c) The court GRANTS Fischbach's request to be included on the court's and all parties' mailing lists. The court orders all

parties and the court to serve Fischbach with all documents filed or submitted to the court in the above entitled action.

4. ... September 21, Fischbach executed and served an "Opposition to Plaintiff's Ex Parte Motion; and Motion for an Order (a) Staying the Release of Monies to Plaintiff Pending Hearing on Plaintiff's Motion for Relief from Order Granting Fischbach Attorney Fees and (b) Adding Fischbach as a Party to Service List." As the court heard plaintiff's motion for relief on November 1, and as the court has granted Fischbach's motion to be included on the service list, above, the court DENIES both motions as moot. Therefore, plaintiff's "Reply to Fischbach & Moore Inc's Opposition to Ex Parte Application for an Order Releasing Bond, and Motion to Strike It and Request for Stay," executed on September 23, 1993, is DENIED. Plaintiff's motion to strike is denied as moot, and plaintiff's request for a stay is denied because, in his reply, plaintiff has

neither stated any grounds for a stay nor described what kind of stay he is seeking. Assuming plaintiff is requesting a stay of all proceedings, as argued in his November 5 motion described in part two above, the court DENIES his request for stay.

5. The court has received a letter from Mr. Sayler, dated November 5, 1993, requesting that the court calendar for November 24 Fischbach's motions for reconsideration of the court's November 2, 1993, order and to rescind its withdrawal of notice of lien. The court declines to hear these motions, either on November 24 or December 1, 1993.

6. Fischbach's "Affidavit and Request for Issuance of Writ of Execution," filed on November 8, 1993, is DENIED as improperly brought before this court. It is properly presentable to the Clerk.

IT IS SO ORDERED.

DATED: NOV 12, 1993 Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B

ORDER DISBURSING REGISTRY; DENYING PLAINTIFF'S OBJECTIONS TO HEARING DATE; DENYING FISCHBACH'S MOTION TO INTERVENE; DENYING FISCHBACH'S MOTION FOR A STAY; DENYING FISCHBACH'S WRIT OF MANDAMUS ARGUMENT; DENYING 91-1543-B(M) UNION AND TRUST DEFENDANTS' REQUEST FOR SANCTIONS; SCHEDULING HEARING TO DETERMINE AMOUNT OF ATTORNEY'S LIEN; AND DENYING PLAINTIFF'S MOTION FOR COURT TO RECUSE ITSELF

On December 1, 1993, a hearing was held before the Honorable Rudi M. Brewster to determine to whom the court should disburse $70,000 in registry funds, plus interest, which were deposited with the court by Local 569, and to determine other miscellaneous matters, some of which pertain to Cases No. 87-0172-B(M) and 91-1543-B(M). Lawrence Moore appeared for himself; Steven C. Sayler, Esq., appeared for Fischbach & Moore, Inc.; Jennifer T. Messersmith, Esq., appeared for IBEW; Melissa W. Cook, Esq., appeared for the Union and Trusts defendants in Case No. 91-1543-B(M); Lewis N. Levy, Esq., appeared for Local 569, Heisler and flowers; George de la

Flor, Esq., appeared for himself; and Karl A. Rand, Esq., appeared for L & B Electric, Inc. This order pertains to Case No. 85-1719-B(M) only; the court has issued separate orders for motions brought at this hearing in Cases No. 87-0172-B(M) and 91-1543-B(M).

Preliminarily, the court notes that plaintiff has submitted an ex parte request for the presiding judge to recuse himself for partiality. The court DENIES plaintiff's motion. The following matters are properly before the court:

I. Disbursement of Registry Funds

In its order of November 2, 1993, the court asked all parties interested in the registry fund to submit motions, and asked Local 569 to show cause why plaintiff should not receive $16, 328.84 in offsets claimed by Local 569. Moving and responding papers were submitted by all parties who appeared at the hearing as stated above.

The court finds that:

A. On March 20, 1990, plaintiff was

awarded an amended judgment of $66,156.31 in damages against defendants Local 569, Heisler and Flowers.

B. On March 8, 1990, plaintiff was awarded $4,797.92 in costs against defendants Local 569, Heisler and Flowers.

C. On November 7, 1990, plaintiff was awarded $403.44 in costs against defendants Local 569, Heisler and Flowers.

D. In total, plaintiff recovered a money judgment of $71,357.67 against defendants Local 569, Heisler and Flowers.

E. As a condition of its stay pending appeal, Local 569 posted a $70,000 bond with the court. The funds have been earning interest at the average rate of 6% per annum since March 20, 1990. Local 569 still owes plaintiff an additional $1,357.67 to cover the entire judgment, plus interest on this amount, calculated at 6% per annum. The court calculates interest at $.23 per day ($1,357.67 x .06 divided by 360 days per year) for 1,366 days (March 20, 1990 through

the filing date of this order, December 15, 1993).1/ Total interest is $314.18. Therefore, aside from the $70,000 already posted, Local 569 owes Moore $1,671.85.

F. The court also awarded costs to Local 569 and against plaintiff; $2,180.84 was awarded to Local 569 on March 8, 1990, and $14,148 was awarded to Local 569 on April 29, 1993. The court is satisfied that the Clerk of the Court properly awarded Local 569 $14,148 in costs on appeal, as Local 569 timely served plaintiff notice of its bill of costs filed with the district court, and plaintiff failed to appear to oppose it.

G. In total, Moore owes Local 569 $16,328.84, and Local 569 owes Moore $1,671.85. As Local 569 and Moore are mutual debtors and creditors, equitable offset is an appropriate remedy. See 8 Witkin, California

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1/. The court takes judicial notice that banks commonly use a 360-day year for calculating interest, and adopts this measure in calculating interest for the purposes of this order.

Procedure 3d, Enforcement of Judgment § 461 (1993). Therefore, Moore owes Local 569 a net total of $14,656.99.

H. The court awarded $626 in costs to IBEW on November 6, 1990.

I. The Ninth Circuit affirmed this court's judgment, which became final when this court spread the Ninth Circuit's mandate, on September 27, 1993.

J. In Case No. 86-0407-K(CM), the court awarded $612.57 in costs to L & B Electric, Inc., and against Moore on June 1, 1987, and awarded $102 in costs to L & b Electric Inc., and against Moore on May 12, 1988 -- a total award of $714.57. This case was affirmed on appeal in a judgment entered June 20, 1988.

K. In Case No. 91-1543-B(M), the court awarded $1,255 in attorneys fees to the Union and Trusts defendants and against plaintiff Moore on April 27, 1993.

L. In Case No. No. 87-0172-B(M), the court awarded an attorneys fees judgment of $224,140.01 to Fischbach & Moore, Inc., and

against plaintiff Moore on June 11, 1993.

M. Until he withdrew sometime in 1989, George de la Flor, Esq., represented plaintiff in the present action. On October 29, 1988, plaintiff and Mr. de la Flor entered into a contract which specifically provided, "Attorney shall have a lien on any settlement, award, verdict or judgment obtained in this matter." On March 9, 1990, Mr. de la Flor filed a notice of attorney's lien in this action. On November 15, 1993, de la Flor filed a motion for distribution of his lien, claiming that he performed services valued at $17,500 in this action. The court finds the lien to be a valid contractual attorney's lien. However, plaintiff disputes the fee amount. As to fee disputes, De la Flor and Moore's contract provides:

> Any dispute between ATTORNEY and CLIENT as to the reasonable value of ATTORNEY'S services (in the event of withdrawal or discharge) . . . shall be arbitrated under the provisions of the State Bar Fee Arbitration Program set forth in sections 6200-6206 of the California Business and Professions Code.

Cal. Bus. & Prof. Code § 6200 states, "Arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client." Therefore, as the arbitration provision of the contract is governed by Cal. Bus. & Prof. Code § 6200 the court finds that plaintiff has the choice whether to arbitrate a fee dispute with Mr. de la flor. Plaintiff has notified the court that he chooses to litigate this dispute in court. Therefore, the court hereby schedules a hearing for January 7, 1994, at 8:00 a.m. in courtroom two. Plaintiff's opposition shall be served and filed on or before December 15, 1993, at 5:00 p.m. Mr. de la Flor's reply shall be served and filed on or before December 22, 1993, at 5:00 p.m., and may be served on plaintiff by depositing it in the mail on that date.

N. On October 28, 1993, IBEW filed a notice of lien in this action under Cal. Civ. Proc. Code ("CCP") § 708.410. Section

708.410 states:

> (a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:
>
> (1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.
>
> (2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.
>
> (b) To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding.
>
> . . .
>
> (d) for the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

As the appeal in this action was "finally determined" on September 27, 1993, IBEW's lien was filed when the action was no longer pending. Therefore, IBEW's lien in invalid under this section. Furthermore, IBEW is not

entitled to an equitable offset because IBEW is not plaintiff's debtor. See 8 Witkin, California Procedure 3d, Enforcement of Judgment § 461.

O. On July 27, 1993, the Union and Trusts defendants in Case No. 91-1543-B(M) filed a notice of lien under CCP § 708.410 in Case No. 91-1543-B(M) for $1,255. As this notice of lien was not filed in the 85-1719-B(M) case, this lien is invalid under CCP § 708.410.

P. On February 1, 1990, L & B Electric, Inc., filed a notice of lien under CCP § 708.410 for $793.77, which it believed represented the principle sum of $714.57 plus interest. The court is satisfied that the lien complies with the requirements of CCP § 708.410 because (1) attached to the lien is a certified copy of the Ninth Circuit's judgment affirming the district court's judgment in that case, as well as copies of L & B's cost awards, and (2) the lien was filed before September 27, 1993, when this action

was still pending. As L & B's costs were affirmed on June 20, 1988, the court hereby finds that interest should have been calculated at 6% per annum from that date. The court calculates interest at %.12 per day ($714.57 x .06 divided by 360 days per year) for 2,004 days (June 20, 1988 through the filing date of this order, December 15, 1993). Total interest is $240.48. Therefore, Moore owes L & B Electric, Inc., $955.05.

Q. On June 23, 1993, Fischbach filed an amended notice of lien in this action under CCP § 708.410 for $226,341.01. However, on October 21, 1993, Fischbach withdrew its lien. Therefore, this lien is invalid.

R. On November 1, 1993, Fischbach filed an amended notice of lien under CCP § 708.410. As this lien was filed after September 27, 1993, it is invalid.

S. On November 2, 1993, Fischbach filed a writ of execution with the clerk of the court for $224,140.01 plus interest. The

court hereby finds the writ to be a valid execution lien under CCP § 697.710, except for its calculation of interest. The court calculates interest at 6% per annum from June 11, 1993, or $37.36 per day ($224,140.01 x .06 divided by 360 days per year) for 203 days (June 11, 1993 through the filing date of this order, December 15, 1993). Total interest is $7,584.08. Therefore, as of December 15, 1993, Moore owes Fischbach $231,724.09 under Fischbach's writ of execution.

T. On November 24, 1993, Fischbach filed a notice of judgment lien on personal property under CCP §§ 697.510 and 697.550. Under § 697.530, cash and deposit accounts do not qualify as "personal property." See also Legislative Committee Comment to § 697.530 (Deering 1983). Therefore, this lien is invalid.

U. An attorney's lien which has been created by contract is effective as of the date of the contract and has priority over a

§ 708.410 lien filed after the date of the contract. Cappa v. F & K Rock & Sand, Inc., 203 Cal.App.3d 172, 174-6 (Cal.Ct.App. 1988); see also Cetenko v. United California Bank, 30 Cal. 3d 528, 530 (Cal. 1982). All else being equal, statutory liens filed on the same property have priority according to the time of their creation, on a first come, first served basis. Cal. Civ. Code § 2897. However, "as between a statutory lien and a right of equitable offset, things are not equal and the offset is given an equitable preference." Salaman v. Bolt, 74 Cal.App.3d 907, 918 (Cal.Ct.App. 1977). It is unclear whether an equitable offset comes before an attorney's lien, but as the $70,000 fund is sufficient to satisfy both Local 569 and Mr. de la Flor's liens,' the court declines to state which comes first by law. In the court's discretion, the court treats Local 569's equitable offset as first.

V. Upon consideration of the papers, oral argument thereon and the foregoing

discussion, the court hereby disburses the registry funds, in order of priority, as follows:

1. $14,656.99 shall be disbursed to Local 569. The Clerk of the Court is ordered to remit a check in the amount of $14,656.99 to:

International Brotherhood of Electrical Workers Local 569
Attention: Thomas Pridemore, Business Manager
215 West Washington Street
San Diego, California 92103

Taxpayer ID # 95-0865952

2. Until further order by the court, the Clerk of the Court is ordered to hold $17,500 in the court registry. This amount shall remain in the court registry pending the court's determination of the amount of Mr. de la Flor's fee on January 7, 1994. The court is not reserving an additional amount for interest on Mr. de la Flor's fee because, as his fee is not yet liquidated, the court cannot calculate interest. Should Mr. de la Flor recover $17,500, the Clerk of the Court shall be ordered to release the remainder to

Fischbach & Moore, Inc.

3. $955.05 shall be disbursed to L & B Electric, Inc. The Clerk of the Court is ordered to remit a check in the amount of $955.05 to:

L & B Electric, Inc.
8219 Garfield Avenue
Bell Gardens, California 90201

Taxpayer ID #95-2482867

4. The remainder of the fund (the fund's total balance as of the date of disbursement minus $33,112.04) shall be disbursed to Fischbach & Moore, Inc. The clerk of the Court is ordered to remit a check in this amount to:

The Fischbach Companies
7 Hanover Square
New York, New York 10004

Taxpayer ID #13-0710600

w. The Clerk of the Court shall remit said checks on January 19, 1994, or as soon as possible thereafter. This 35 day window shall provide the parties time to receive this order and to file an appeal, if any, to the Ninth Circuit before any funds are

released.

II. **Objections to the Hearing**

Plaintiff has filed an objection to the court's scheduling hearings in Cases No. 85-1719-B(M), 87-0172-B(M) and 91-1543-B(M) at the same time. The court DENIES this objection.

III. **Sanctions**

The Union and Trusts defendants in Case No. 91-1543-B(M) have requested the court to impose sanctions against plaintiff for filing numerous frivolous pleadings. The court DENIES this request.

IV. **Motion to Intervene**

Fischbach & Moore, Inc., has filed a motion to intervene in this case for the sole purpose of obtaining a writ of attachment. This motion is DENIED as moot.

V. **Motion to Stay Release of Funds**

Fischbach & Moore, Inc., has filed a motion to stay the court's order releasing the registry funds. This motion is DENIED.

VI. **Writ of Mandamus**

Fischbach & Moore, Inc., has notified the court that it believes this court was divested of jurisdiction to disburse the registry funds when plaintiff filed his petition for a writ of mandamus with the Ninth Circuit, seeking to compel this court to disburse the registry funds. The court is not aware of any authority for this proposition, nor has Fischbach cited any to the court. This motion, to the extent it is a motion, is DENIED.

IT IS SO ORDERED.

DATED: DEC 15, 1993

Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)

ORDER FILING PLAINTIFF'S MOTION FOR AN ORDER RELEASING BOND NUNC PRO TUNC TO SEPTEMBER 27, 1993

The court has reviewed plaintiff's request for correction of the docket in this case. The court received plaintiff's Ex Parte Notice of Motion and Motion for an Order Releasing Bond on September 13, 1993. The motion was rejected for filing because the court had not yet spread the Ninth Circuit's mandate affirming the district court's judgement and restoring this court's jurisdiction to release the appeal bond. As the court spread the mandate on September 27, 1993, the court hereby orders plaintiff's motion filed nunc pro tunc to September 27, 1993.

IT IS SO ORDERED.

DATED: JAN 7 1994

Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)

ORDER DISBURSING REGISTRY FUNDS TO GEORGE DE LA FLOR AND THE FISCHBACH COMPANIES

In its disbursement order of December 15, 1993, the court ordered the Clerk of the Court to hold $17,500 pending the court's determination of the amount of George de la Flor's attorney's lien. The order stated that should the court determine that Mr. de la Flor is entitled to less than $17,500, the remainder would be disbursed to Fischbach & Moore, Inc. On January 12, 1994, a hearing on Mr. de la Flor's attorney's lien was heard before the Honorable Rudi M. Brewster. Lawrence Moore appeared in pro per; George de la Flor, Esq., appeared for himself.

A. Legal Standards

In California, an attorney does not have a lien on his or her client's judgement by equitable right. Wagner v. Sariotti, 56 Cal. App.2d 693, 697 (Cal.Ct.App. 1943). Under California law, "A lien in favor of an

attorney upon the proceeds of a prospective judgement in favor of his client for legal services rendered...may be created either by express contract...or it may be implied if the retainer agreement between the lawyer and client indicates that the former is to look to the judgement for payment of his fee." Cetenko v. United California Bank, 30 Cal. 3d 528, 531 (Cal. 1982) (citations omitted). In most jurisdictions, attorneys are allowed "specific charging liens, " or, equitable rights to satisfy his or her expenses and fees out of the judgment. Witkin Cal. Proc. 3d & 143. However, in California, courts have not yet approved of such liens. Id., see also Isrin v. Superior Court, 63 Cal. 2d 153,157 (Cal. 1965). A contractual attorney's lien survives a discharge or voluntary withdrawal of the attorney from representation. Pearlmutter v. Alexander, 97 Cal. App. 3d Supp. 16, 20 (Cal. Ct. App. 1979).

B. Discussion

Upon review of the papers. the court finds that there is no dispute that Mr. de la Flor represented Mr. Moore for two separate periods of time. The first representation period appears to have commenced some time before this case was filed and ceased in 1987. The parties do not agree, however, on whether they signed a written fee agreement for the first representation period. Mr. de la Flor claims that such an agreement existed, but that he no longer has a copy of it. Neither R. de la Flor nor Mr. Moore has submitted a copy of such an agreement to the court.

The second representation period appears to have commenced on October 29, 1988, when Mr. de la Flor and Mr. Moore entered in to a written fee agreement. Mr. de la Flor has submitted a copy of this agreement to the court. The agreement provides, "Attorney shall have a lien on any settlement, award, verdict or judgment obtained in this matter." The court finds that this contract

establishes a valid attorney's lien in favor of Mr. de la Flor for fees earned during the second representation period.

Mr. de la Flor has submitted moving papers seeking disbursement of $17,500 in attorneys fees. Of that amount, $12,537.50 reflects fees he claims he earned during the first representation period, and $4,962.50 reflects fees he claims he earned during the second representation period. The court has reviewed billing statements submitted by Mr. de la Flor. Based on these billing statements, the court finds that $4,962.50 represents 66.15 hours at $150 per hour, divided by de la Flor to reflect the amount of time he believes he spent assisting Mr. Moore, as opposed to his co-plaintiff, Walter Whelan.

Under California law, without evidence of an agreement between Mr. de la Flor and Mr. Moore, the court has no authority to disburse funds for attorney's fees Mr. de la Flor claims he earned during the first

representation period. Therefore, the court can award only $4,962.50, plus interest, to Mr. de la Flor. Calculating interest at 6% per annum, beginning on the last billing date, April 11, 1989, and continuing to January 12, 1994, the court awards Mr. de la Flor daily interest of $.83 ($4,962.50 times .06 divided by 360 days per year), or a total interest payment of $1,441.71.

C. Disbursement Schedule

Therefore, upon consideration of the law, the moving papers, and oral argument thereon, the court orders the Clerk of the Court to remit a check in the amount of $6,404.21 to:

The Fischbach Companies
7 Hanover Square
New York, New York 10004

The Clerk of the Court shall remit said checks on February 17, 1994, or as soon as possible thereafter. This thirty five day window shall provide all parties time to receive this order and to file an appeal before these funds are released.

This order shall have no other effect on the court's December 15, 1993, disbursement order.

IT IS SO ORDERED

DATED: JAN 13, 1994

Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B (AJB)

ORDER DENYING PLAINTIFF'S REQUEST FOR FINDINGS OF FACT

The court has received plaintiff's "Request for Findings of Fact on the Court's Awards of Transcript Costs to Defendant Local 569 and of Attorney Fees on an (Ostensible) Lien by George de la Flor." The court declines to issue findings of fact. Plaintiff's request id DENIED.

IT IS SO ORDERED.

DATED: MARCH 28, 1994

Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B (AJB)

ORDER ESTABLISHING PROCEDURES FOR FILING MOTIONS

The court has received a letter from plaintiff, dated April 13, 1994, a copy of which is attached, seeking a hearing date for motions for reconsideration of several orders of the court. Due to the volume of paperwork this case has generated, and the number of motions that have been filed and likely will be filed, the court hereby establishes a new procedure for filing motions in this case, effective April 14, 1994.

Any party who wishes to have a motion heard shall not request a hearing date from chambers, but shall file the motion with the Clerk's Office. The Receiving Clerk is ordered to file-stamp such motions without a hearing date designated. Upon receiving a copy of said motion, the court will review it and decide whether it will entertain the

motion. The court will issue its decision in a written order, which will be mailed to the parties. The court's order will; (1) state that the court declines to entertain the motion; or (2) state that the court will entertain the motion on the papers and set a briefing schedule; or (3) state that the court will entertain the motion at a hearing, set a hearing date and set a briefing schedule.

As for plaintiff's present request, he may file his motions with the Clerk's Office, and the court will respond according to the procedures outlined in this order.

IT IS SO ORDERED.

DATED: APRIL 15, 1994

Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 94-55120
D.C. No. CV 85-1719-B

MEMORANDUM*

Appeal from the United States District Court for the Southern District of California Rudi M. Brewster, District Judge, Presiding

Argued and Submitted April 5, 1995
Pasadena, California

Before: McKay,** REINHARDT, and FERNANDEZ

Lawrence Moore appeals the district court's order which disbursed the proceeds of a supersedeas bond, posted by Local 569 pursuant to a dispute under a collective bargaining agreement, to various creditors of Moore. We affirm in part and reverse in part.

Moore contends that the district court erred when it exercised jurisdiction over

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Hon. Monroe G. McKay, Senior United States Circuit Judge, United States Court of Appeals for the Tenth Circuit, sitting by designation.

this case, when it permitted Moore's creditors to proceed against the bond, and when it permitted Local 569 an offset. Moore's ex employer, Fischbach & Moore (Fischbach), which was allowed to proceed against the bon, requests attorney's fees.

A. District Court Jurisdiction

A court retains jurisdiction over matters necessary to satisfy a judgment. See Blackburn Truck Lines, Inc. v. Francis, 723.F.2d 730, 732 (9th Cir. 1984). In addition, the general rule is that when a proper notice of appeal has been timely filed, jurisdiction over any matters involved in the appeal is transferred from the district court to the court of appeals. See Matter of Thorp, 655 F.2d 997, 998 (9th Cir. 1981) (per curiam). The district court is divested of authority to proceed further except in aid of the appeal, or to correct clerical mistakes, or in aid of execution of a judgment, until the mandate has issued.

Id; see also Lara v. Secretary of the Interior of the United States, 820 F.2d 1535, 1543 (9th Cir. 1987).

In the instant case the contested orders were made well after the issuance of the mandate. Moreover, the order regarding Local 569's entitlement to an offset was made pursuant to the district court's authority to tax costs. and the orders regarding Fischbach, George de la Flor and L&B Electric were made pursuant to Fischbach's writ of execution and the latter creditor's filing of valid liens. The district court had jurisdiction to make those orders in this case.

B. The Merits

With one exception, the district court did not err when it awarded Moore's creditors amounts from the bond.

(1). In Moore v. Local 569, Int'l Bhd. of Elec. Workers, No. 93-56717 (9th Cir. 1995), filed on the same day as this disposition, we have reversed the district

court's determination in Southern District of California District Court Case No. 87-0172-B, which awarded Fischbach attorney's fees. That award was the basis of Fischbach's claim against the bond in this case. Thus, because that award has been reversed, that claim against the bond must fall with it.1/

(2). George de la Flor had represented Moore in this action. They had entered into a contract which provided that de la Flor would have a lien on any award that Moore obtained in this matter. De la Flor filed a notice of attorney's lien in this action. We acknowledge the validity of attorney's liens in federal actions. See Venegas v. Skaggs, 867 F.2d 527, 531 (9th Cir. 1989), aff'd sub nom. Venegas v. Mitchell, 495 U.S. 82, 110 S.Ct. 1679, 109 L.Ed.2d 74 (1990); see also United States v. 717.42 Acres of Land, 955 F.2d 376, 382 (5th Cir. 1992). We analyze fee contracts and the existence of attorney's

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1/. Fischbach seeks its attorney's fees in this appeal. Of course, it cannot recover them.

liens under state law. Venegas, 867 F.2d at 531.

De la Flor's lien was valid. It was not extinguished, as Moore asserts, under California Code of Civil Procedure section 697.040 (a) when Local 569 posted its bond since that provision refers to liens created under statute while the lien at issue here was created by contract. See Cetenko v. United Cal. Bank, 30 Cal.3d 528, 531, 179 Cal.Rptr. 902, 904, 638 P.2d 1299 (1982). In addition, the lien was not invalidated by California Code of Civil Procedure sections 708.410.420, which set forth requirements for notices of liens filed by judgment creditors, because de la Flor is not a judgment creditor. See Id., 30 Cal.3d at 533, 179 Cal.Rptr. at 905. California law also provides that an attorney's lien survives an attorney's discharge or voluntary withdrawal. See Fracasse v. Brent, 6 Cal.3d 784, 791, 100 Cal.Rptr. 385, 390, 494 P.2d 9 (1972) (discharge); Estate of Falco, 188 Cal.App.3d

1004, 1016, 233 Cal.Rptr. 807, 814 (1987) (withdrawal); Pearlmutter v. Alexander, 97 Cal.App.3d Supp. 16, 19-20, 158 Cal.Rptr. 762, 763-765 (Cal.App.Dep't.Super. Ct. 1979) (withdrawal). The district court determined that services were rendered and that the contract explicitly provides for a lien on Moore's judgment. Therefore, the district court did not err when it allowed de la Flor's claim.

(3). L&B had been awarded damages and costs against Moore in a different case, and L&B had a valid lien. Moore's citation to provisions of the California Code of Civil Procedure down not change this. Section 708.410 requires a judgment creditor to file a notice of lien and a certified copy of its judgment in order to obtain a lien. The record reflects that L&B did those things. Section 697.040 (a) extinguishes liens where a bond is posted and a stay of judgment is obtained. However, that rule applies only to stays that occur in the case where the

creditor recovered the judgment. See California Commerce Bank v. Superior court, 8 Cal.App.4th 582, 583, 10 Cal.Rptr.2d 418, 419 (1992). Therefore, the district court properly allowed L&B's claim.

(4). Moore challenges the district court's decision to allow Local 569 an offset. Local 569 provided evidence that service of the bill of costs was made on Moore in a timely fashion and that he was notified of the date of the hearing on the bill. The costs were warranted under Federal Rule of Appellate Procedure 39, which provides that the cost of the reporter's transcript will be taxed against the appellant if a judgment is affirmed. Moore lost his appeal number 90-55557. Consequently, Local 569 was a prevailing party in that case. The district court did not abuse its discretion when it held Moore responsible for eighty percent of the transcript costs and allowed Local 569 the offset. The practice of apportioning costs

is not a new one. Cf. Cornwell Quality Tools Co. v. CTS Co., 446 F.2d 825, 833 (9th Cir. 1971), cert. denied, 404 U.S. 1049, 92 S.Ct. 716, 30 L.Ed.2d 740 (1972). California courts also recognize the validity of offset. See Kruger v. Wells Fargo Bank, 11 Cal.3d 352, 362, 113 Cal.Rptr. 449, 455, 521 P.2d 441 (1974). Finally, the district court's decision to allow Local 569 an offset did not conflict with the local rules. Local Rule 54.1(c) of the Southern District of California specifically provides that "(t)he cost of transcripts necessarily obtained for appeal is allowable." That comports with Federal Rule of Appellate Procedure 39(e), which directs district courts to tax the costs of the reporter's transcript. Thus, the allowance of the offset was proper.

AFFIRMED in part, REVERSED in part and REMANDED. Between Moore and Fischbach, Moore shall recover his costs on appeal. The other appellees shall recover their costs on appeal from Moore.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 94-55120
D.C. No. CV-85-01719-B

ORDER DENYING PETITION FOR REHEARING AND REJECTING SUGGESTION FOR REHEARING IN BANC

Before: McKAY,* REINHARDT, and FERNANDEZ,

The panel has unanimously voted to deny the appellee Fischbach & Moore's petition for rehearing. The suggestion for rehearing in banc was circulated to the active judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

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* Hon. Monroe G. McKay , Senior United States Circuit Judge, United States Court of Appeals the Tenth Circuit, sitting by designation.

California Code of Civil Procedure ("C.C.P.") § 674. Abstracts of judgment or decree; contents

An abstract of a judgment or decree requiring the payment of money shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:

(a) The title of the court where the judgment or decree is entered and cause and number of the action.

(b) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court.

(c) The name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record.

(d) The name and address of the judgment creditor.

(e) The amount of the judgment or decree as entered or as last renewed.

(f) The social security number and driver's license number of the judgment debtor if they are known to the judgment creditor; and, if either or both of such numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.

(g) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(h) The date of issuance of the abstract.

C.C.P. § 697.040. Stay of enforcement of judgment; effect on liens

(a) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

(b) Unless the court otherwise expressly

orders, a stay of enforcement of the judgment under Section 918 does not extinguish or prevent the creation of a lien under Article 2 (commencing with Section 697.310) or Article 3 (commencing with Section 697.510); but, unless the court otherwise expressly orders, no other liens may be created or continued under this division during the period of the stay of enforcement.

(c) Unless the court expressly orders otherwise, if enforcement of the judgment is stayed pursuant to Section 1699 or 1710.50:

(1) Existing liens created under this division during the period of the stay.

C.C.P. § 697.050. Lien Extinguished; release

If a lien created pursuant to this division is extinguished, property held subject to the lien shall be released unless the property is to be held under another lien or the property is ordered by the court to be held pending resolution of a dispute concerning its proper disposition.

C.C.P. § 708.410. Interests subject to lien; filing notice of lien and abstract or copy of judgment; service; pending, defined

(a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:

(1) Any cause of action of such ~~judgment~~ debtor for money or property that is the subject of the action or proceeding.

(2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.

C.C.P. § 708.420. Contents of notice of lien

The notice of lien under Section 708.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of the court and the cause and number of the

pending action or proceeding in which the notice of lien is filed.

(b) The name and last known address of the judgment debtor.

(c) The name and address of the judgment creditor.

(d) The title of the court where the judgment creditor's money judgment is entered and the cause and number of the action, the date of entry of the judgment, and the date of any subsequent renewals, and where entered in the records of the court.

(e) The amount required to satisfy the judgment creditor's money judgment at the time the notice of lien is filed in the action or proceeding.

(f) A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the action or proceeding and to the judgment debtor's rights to money or property under any judgment subsequently procured in the action or proceeding.

(g) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the judgment debtor's rights to money or property under any judgment procured therein may be entered into by or on behalf of the judgment debtor, and that the judgment debtor may not enforce the judgment debtor's rights to money or property under any judgment procured in the action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:

(1) The prior approval by order of the court in which the action or proceeding is pending has been obtained.

(2) The written consent of the judgment creditor has been obtained or the judgment creditor has released the lien.

(3) The money judgment of the judgment creditor has been satisfied.

(h) A statement that the judgment debtor may claim an exemption for all or any portion of the money or property within 30 days after

the judgment debtor has notice of the creation of the lien and a statement that, if the exemption is not claimed within the time allowed, the exemption is waived.

CCP. § 708.460. Statement concerning lien endorsed on judgment; inclusion in abstract

(a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the judgment creditor.

C.C.P. 708.470. Order for satisfaction of lien; order not to transfer property; judgment rendered against parties transferring property or making payment to judgment debtor

(a) If the judgment debtor is entitled to money or property under the judgment in the action or proceeding and a lien created under this article exists, upon application of any

party to the action or special proceeding, the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all parties. Service shall be made personally or by mail.

UNITED STATES DISTRICT COURT FOR

THE SOUTHERN DISTRICT OF CALIFORNIA

LOCAL RULES

265-1. [54.1.a.]. In General* See 28 U.S.C. 1920 and 1923; Rule 54(d) F.R.Civ.P. Unless otherwise ordered by the court the prevailing party shall be entitled to costs. The party in whose favor a judgment or decree for costs is awarded or allowed by law, and who claims his costs, shall, after verdict, or after the making of an order for judgment or decree, serve on the attorney for the adverse party and file with the clerk (such service and filing in no event to be later that five (5) days after notice of the entry of the decree or judgment) his bill of costs and disbursements, together with a notice when application will be made to the clerk to tax same.

. . .

265-4. Fees Incident to Transcripts-Trial Transcripts

The cost of the originals of a trial transcript of matters prior or subsequent to trial, furnished the court is taxable, when either requested by the court, or prepared pursuant to stipulation. Mere acceptance by the court does not constitute a request. Copies of transcripts for counsel's own use are not taxable in the absence of a special order of the court.

54.1.c. Fees Incident to Transcripts-Trial Transcripts

The cost of the originals of a trial transcript, a daily transcript and of a transcript of matters prior or subsequent to trial, furnished the court is taxable, when either requested by the court, or prepared pursuant to stipulation. Mere acceptance by the court does not constitute a request. Copies of transcripts for counsel's own use are not taxable in the absence of a special order of the court.

The cost of transcripts necessarily obtained for appeal is allowable.

The cost of a transcript of a statement by a judge from the bench which is to be reduced to a formal order prepared by counsel is allowable.

The cost of other transcripts is not normally allowable unless, before it is incurred, it is approved by a judge or stipulated to be recoverable by counsel.

265-13. [54.1.1.]. Party Entitled to costs*

The determination of the prevailing party shall be within the discretion of the court in all cases except where such determination is inconsistent with statute or the F.R.Civ.P. or the rules of the appellate courts. If each party recovers in part, ordinarily the party recovering the larger sum will be considered the prevailing party. The defendant is the prevailing party upon a dismissal or summary judgment or other termination of the case without judgment for

the plaintiff on the merits.

265.18. [54.1.q.]. Appellate Costs*

The District Court does not tax or re-tax appellate costs. The certified copy of the judgment or the mandate of the court of Appeals, without further act by the district Court is sufficient basis for issuance by the Clerk of the District Court of a writ of execution to recover costs taxed by the appellate court.

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* No change in January 1, 1992 amendments.